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Child Marriage within the Sea Tribe of Kelumu Island: Issues and Problems

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ABSTRACT

Sea Tribe is a group of indigenous people on Kelumu Island entrenched in the practice of child marriage. This study aims to analyze the law's implementation on marriage and its impacts on the sea tribal community of Kelumu Island using empirical/socio-legal research methods. Furthermore, the primary legal data used are the 1945 Constitution, Law Number 1 of 2019 on Amendments to Law Number 1 of 1974 on Marriage, Law Number 35 of 2014 on Child Protection, and Number 20 of 2003 on Marriage, Child Protection, and National Education System. Theory of Legal Effectiveness was also used. The results showed that the implementation of the marriage law in the Sea Tribe community of Kelumu Island has not yet been classified as adequate. The implementation of the marriage law in the sea tribal community is classified as ineffective when measured with Theory of Legal Effectiveness. This is due to the weakness of several existing factors, namely legal factors, law enforcement, infrastructure, maturity, and local communities. Meanwhile, the impact of child marriage is the loss of the children's right to education and health.

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1 Introduction

Marriage is a universal culture and is a part of every human life, it serves as a foundation to form a family. Furthermore, it implies an inner and outer bond between a man and a woman as husband and wife to form a family (Oktarina et al., 2015, p. 75). Since marriage is essential to the cycle of human existence (Carr, 2020, p. 8), every religion imposes certain requirements on its believers to ensure that the desired result is achieved (Musyafah, 2020, p. 111-112). It is a sacred and noble bond between men and women based on mutual love (Meilindan et al., 2020, p. 410). Edward Westermarck, an anthropologist, defined the concept as a relationship between one or more men to one or more women recognized by custom or law (Pandey, 2021, p. 58).

Humans have instincts to procreate (de Roubaix, 2021, p. 1). Gough, a sociologist, defined marriage as a relationship between a woman and one or more other persons wherein a child born under the circumstances not prohibited by the rules of the relationship is accorded full birth-status rights common to normal members of the society or social stratum.

7 Every marriage is not only based on biological needs between men and women who are recognized as legitimate but as executors of the process of human nature. Likewise, Islamic law contains the primary 7 psychological and spiritual elements, including inner and outer life, humanity, and truth. Marriage is also centered on religion, which implies that religious characteristics form the foundation of family life through demonstrating trust in Allah.

Rules and regulations 14 have existed since members, and religious leaders maintained simple communities. They continue to thrive in a society with governmental power and within a country. In Indonesia, marriage restrictions have existed from ancient times, throughout the Sriwijaya and Majapahit dynasties, to the Dutch colonial era until independence. The rules concern Indonesian and foreign citizens because of the wider association.

5 Article 1 of Law Number 1 of 1974 says that marriage is an inner and outer bond between a man and a woman as husband and wife to form a happy and prosperous family based on God Almighty. The inner and outer bond means that the concept is only sufficient with the existence of "outward and inner bonds." (Mamahit, 2013, p. 12)

Indonesia already has a written legal instrument regulating marriage, namely 1 Law Number 16 of 2019 on Amendments to Law Number 1 of 1974. Article 7 of the law stipulates that marriage is only permitted when 6 the man and woman have reached 19. However, the parents may request a dispensation from the court on the grounds of being very urgent, accompanied by sufficient supporting evidence when the requirements are unmet.

Based on this regulation, it is still possible for underage marriages to take place with dispensation from the court for "urgent reasons." However, the law does not explain the category or meaning 12 of urgency. Therefore, it is unsurprising that child/underage marriage is still common in Indonesia. Based on data from the Directorate General of the Religious Courts Agency, there were 34 thousands of applications for dispensation from January-June 2020. From those 34 thousand applications, 97% were granted, and 60% were children under 18. The number of applications for dispensation is much higher than last year's which is 23,700. The application is conducted because one or both brides-to-be have not entered the age of marriage based on the law.

Many citizens still carry out underage marriages from the provisions issued by the National Family Planning Coordinating Agency (BKKBN), especially residents in rural 16 areas. Based on information from the Child Marriage Report, the marriage habits of girls are more likely to occur in rural areas than 34 in urban before the age of 18 or 15 (Sahrizal, 2020). Underage marriages have existed for a long time, particularly in rural areas that are not considered progressing in terms of their level of education, economics, or cultural traditions (Budi, 2022, p. 11).

Children are as important as adults, and their rights need to be recognized (Dewi et al., 2022, p. 270). The phenomenon of child marriage is increasingly happening, even though it can trigger various negative impacts such as disability in infants, maternal death during childbirth, and unfulfillment of children's education rights (Sekarayu 17 al., 2021, p. 40). Children are subjects that should be protected, and their rights fulfilled as stipulated in Law Number 45 of 2014 on Amendments to Law Number 23 of 2002 on Child Protection. Article 1 explains 62 that a child is a person under the age of 18, including those in the womb. It is emphasized in Article 26, paragraph 1, which states that parents/guardians are obliged to prevent marriage at the age of a child. The phenomenon also occurs in Sea Tribe in the Riau Islands. These tribes are less impacted by sea development. The spread is almost evenly distributed in every Regency

City in the Riau Islands province. However, the number is not always the same from one district to another.

Culture and history show that the Malays are the original tribes that have inhabited the Riau Islands since the 15th century. However, the Malays are not the only indigenous tribes in this area of the Riau Islands. The Sea Tribe, or the Orang Laut, is one of the native tribes of the Riau Islands. They are ethnic groups with nomadic characteristics who live and settle in the waters of several islands within the Riau Archipelago Province, Indonesia (Haryono et al., 2016, p. 93). Almost all the Sea Tribe in the Riau Islands have moved to the mainland. Information gathered from the Social Service showed that the community changed their place of residence through the housing assistance program budgeted by the government. However, some of them select to return to their original homes at night (Elsera, 2019, p. 2).

The Sea Tribe, according to the Big Indonesian Dictionary, signifies group or ethnicity. The sea represents a very large (salty) water-gathering place that separates the land to form islands. Therefore, the definition of the Sea Tribe is a group of people or communities living in the sea. It is a designation to indicate a place on whose place and environment are essentially at sea (Yulia, 2019, p. 142). "Sea People" are tribes that see the sea as their closest ally and primary source of sustenance. They prefer to dwell by the shore and even construct towns on the water's surface (Hukmiah, 2020, p. 3328).

They are an advanced nation in which they are also a part of an ethnic group, occupying the waters of the Riau Archipelago and have been able to survive for centuries with traditional values passed down from generation. Lingga Regency is one of the Riau Islands Province areas still inhabited by tribal sea communities. Kelumu Island is subsequently inhabited by tribal marine communities totaling around 160 people in 56 families.

The practice of marrying Sea Tribe children on Kelumu Island has been going on since time immemorial. The 56 heads of the family are marriages that occur early, and the bride should be around 14-15 years old. The practice of child marriage among Sea Tribe still occurs because a culture has been preserved from time immemorial where the bride's family feels indebted to the groom. Attention to combating this concept has risen globally, according to Alejandro Fuentes and Marina Vannelli (2021, p. 84).

Many studies have discussed underage marriages with indigenous peoples. However, no research has ever been conducted on Sea Tribe in Lingga District as the object of research. In addition, there are also several studies that examine the indigenous peoples of the Sea Tribe in Lingga District, but they are focused on fulfilling the right to education and the obstacles experienced in fulfilling the right to education for the children of the Sea Tribe in Lingga Regency.

Even though there is a very big problem that has been going on for generations, namely regarding underage marriage which is one of the causes of non-fulfillment of children's right to education because one of the impacts of child marriage is the loss of children's rights to education. Therefore, this study specifically discusses the application of marriage law to the Sea Tribe community in Lingga District and the impact of underage marriages and seeks solutions to the phenomenon of child marriages of the sea tribe in Lingga District.

Based on this background, there are 2 formulations of the problems discussed, namely: 1) how is the implementation of Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 in the practice of underage marriage on the island Kelumu, Lingga Regency? 2) What are the impacts of child marriage on Sea Tribesmen in Kelumu Island, Lingga Regency?

2. Method

The method⁵⁴ used to obtain primary and secondary data is socio-legal research (empirical research). Primary data were obtained from interviews with Mr. Ketem, the Head of the Kelumu Island Sea Tribe (Ketem, personal communication, June 30, 2021), Mr. Bomba, an Elder in the Kelumu Island Sea Tribe (Bomba, personal communication, June 30, 2021), Young Pastor Vientje, a religious leader of the Kelumu Island Sea⁴² Tribe (Vientje, personal communication, June 30, 2021), and nine (9) women from the island. Secondary data consisting of⁴⁰ primary legal materials, namely the 1945 Constitution, Law Number 16 of 2019 on Marriage and Law Number 35 of 2014 on Child Protection, and Law Number 20 of 2003 on the National Education System.

3. Discussion and Analysis

The Implementation of Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 in Underage Marriage Practices on Kelumu Island, Lingga Regency.

A marriage based on mental, physical, and spiritual readiness is used as a barometer of the perfection of an ideal between the two brides in building their household (Sujono, 2022, p. 1). Meanwhile, marriage at a young age violates children's human rights. Contrary to the belief, child marriage in developing rural nations is inexorably tied to cultural backwardness (Dewi, 2018). The concept is regulated in Indonesian national law, namely Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 on Marriage. This regulation explains that the conditions are men and women who wish to be married should be 19 years old. It provides dispensation for underage marriages, such as children aged 16 years being allowed to marry with permission from their parents (Eleanora et al., 2020, p. 50). This is regulated in article 7, which reads, "(1) Marriage is only permitted when the man and woman have reached the age of 19 (nineteen) years. (2) However, when there is a deviation from the age provisions referred to in paragraph (1), the parents may request a dispensation from the court, accompanied by sufficient supporting evidence. (3) The granting of dispensation, as referred to in paragraph (2), is obliged to the opinions of the two people to be joined."

The existence of regulations that provide dispensation and loopholes has triggered the practice of child marriage²⁰ in Indonesia. (Faried, 2017, p. 41) Based on Law Number 35 of 2014 on Amendments to Law Number 23 of 2002 on Child Protection, a child is not yet 18 years old, including children who are still in the womb. They are subjects who should receive protection at an age vulnerable to rights violations (Fibrianti et al., 2020, p. 56).

Child protection encompasses all actions that ensure and safeguard children and their rights. It allows them to live, grow, develop, and participate ideally with human dignity and protection from discrimination and violence. Based on this, the Marriage Law is contrary to the Child Protection Act. This is a big problem in the substance of Indonesian law because one regulation contradicts another. The implementation of harmonization of laws and regulations is an urgent need because legal problems are increasingly requiring a holistic approach. In the era of globalization, the approach to handling development will only result in patchy solutions. Therefore, it does not solve various problems in implementing existing national development.

This phenomenon occurs among the children of the Sea Tribe on Kelumu Island, Lingga Regency. Sea tribe contains people known to live on canoes and roofed with awnings. They are referred to as seafarers, gypsies, nomads, and boat-people/boat-dwelling people since their nomadic way of existence follows the pattern of marine resources. The existence can still be found in the waters of the Riau Islands, on the Johor Peninsula's southern coast, on Sumatra's east coast, in the Bangka Belitung Islands, and around the north coast of Singapore. (Rohmatunnisa, 2020, p. 89) Lingga Regency is one of the regions in the Riau Islands Province.

Kelumu is one of the Lingga sub-district areas inhabited by the Mantang Sea Tribe community. The Sea Tribe depends on the sea and is very traditional, known as a society with no religion (animism). Since the entry of services from the Pentecostal Church (GPdI) in Kelumu 40 years ago, the Sea Tribe in Kelumu has embraced Christianity with evangelism and services carried out by Pastor Vientje. This Sea Tribe also lived in canoes, but in 1985 they formed a cottage house used as a residence, and in 2008 a house was built on the land by the local government.

The phenomenon of child marriage has occurred since time immemorial in the Sea Tribe community. The culture in question is where the bride feels indebted to the kindness of the groom. The interviews and observations with 6 (six) women from the Sea Tribe showed that they had been married for 14-15 years. An interview with Mrs. Vientje showed that 56 leaders of Sea Tribe households on Kelumu Island are the product of underage marriages. It was not carried out religiously and was recorded in the civil registry.

The Sea Tribe community lacks sufficient knowledge about underage marriage's dangers. They get married because of the culture that is still maintained. Meanwhile, about 50% of the marine tribesmen do not attend school, and the other 50% only graduate from elementary and junior high school. In the past, they did not speak Indonesian and used the sea language. Lack of education is also a factor in the occurrence of child marriages.

In dealing with this matter, Mrs. Vientje as a religious leader educates and directs the Sea Tribe community regarding the meaning of marriage according to Christian teachings. Until now, marriages by the tribal people of the sea have been carried out in the church. However, child marriage still occurs today due to culture and lack of knowledge about the associated danger. Instead of sinning because of living in the same house, they are still directed to marry and be blessed in the church. Mrs. Vientje conducts this in collaboration with the local village head. Therefore, the marriage is religiously legal, and a family card will be made when they are of sufficient age.

The implementation of Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 has not been considered effective from the perspective of child marriage on Kelumu Island and the Theory of Legal Effectiveness by Soerjono Soekanto. According to Barda Nawawi Arief, "effectiveness" is the influence or effect of success or efficacy. In other words, the previously planned goals can be achieved because of the activation process. Meanwhile, Legal Effectiveness is the conformity between what is regulated in the implementing law. It could also be due to community compliance with the law because of the coercive element of the law. Legislation enacted by the competent authority is not always an abstraction of community ideals. Therefore, the law is ineffective, unenforceable, or even in some instances, civil disobedience is issued. In the reality of people's lives, the application is inadequate, hence this discourse becomes an interesting discussion from the perspective of legal effectiveness.

According to this theory, 5 factors are measured in determining an effective regulation, which can be seen as legal, law enforcement, facilities and infrastructure, community, and cultural

factors. The legal factor (law): Indonesia already has regulations governing marriage, namely Law Number 16 of 2019 on Marriage. However, Article 7 provides space to carry out child marriages, which states that marriage is only permitted when the man and woman have reached the age of 19 (nineteen) years. (2) In the event of a deviation from the age provisions referred to in paragraph (1), the parents may request a dispensation from the court because it is very urgent, accompanied by sufficient supporting evidence". The article does not explain the details or categories of "urgent circumstances" in question. This contradicts Law Number 35 of 2014 on Child Protection. Article 16, paragraph 1 states that parents are obliged to prevent child marriage. Based on this, the marriage and child protection laws contradict each other. Law enforcement factors include the parties that form and apply the law. In the practice of child marriage of Sea Tribe on Kelumu Island, enforcers are the religious figures who bless the union and the local village head. Based on the results, local religious leaders cannot prohibit the occurrence of child marriages because this has become entrenched. The union will continue and may even worsen when it is not blessed. Therefore, it is feared that the marriage will not last long. In this case, local religious leaders work with the village head to bless the wedding to be built on a good religious background. However, the family card and marriage certificate will only be issued when the age of the bride and groom is sufficient. Factors of facilities: Regarding the child marriage of Sea Tribe on the island of Kelumu, there is no socialization on the dangers and associated laws. Public Community factors, namely the environment in which the law applies. The people are the Sea Tribe of Kelumu Island, and the local community has carried out child marriage for a long time. They lack sufficient knowledge regarding child marriage's dangers. Cultural factors are based on the result of work, creativity, and taste of human initiative in social life. Marrying Sea Tribe children is one of the cultures still being practiced today. The culture is that they will marry their daughters on the grounds of repaying the kindness of the groom's family.

The Impact of the Marriage Practices of the Children of the Sea Tribe on Kelemu Island, Lingga Regency

Marriage as a legal bond between husband and wife (Munir et al., 2020, p. 438). From a religious and state perspective, marriage has obtained legality and is stipulated as recommended, with conditions and provisions by the Shari'a and legislation. Faith had been described as complementary in a traditional morality context influenced mainly by religion (Naseera et al., 2022, p. 21) Marriage aims to produce offspring and fulfill religious instructions to establish a harmonious, prosperous, and happy family. Harmonious in using the rights and obligations of family members. Prosperity implies the creation of inner and outer tranquility due to the fulfilment of the needs of life.

According to Law Number 1 of 1974, the purpose of marriage is to form a happy and eternal family (household) based on the One Godhead. The prospective husband and wife should have matured in mind and body to realize the purpose without ending in divorce and getting good quality descendants (Bastomi, 2016, p. 355). About marriage principle, one of the standards used is the determination of the age of marriage. According to Law Number 1 of 1974 on Marriage, Article 7 paragraph (1), the measure of maturity is implemented by the existence of an age limit that should be met as a condition for a person to marry. The age limit is 16 (sixteen) and 19 (nineteen) years for prospective brides and grooms. Determining the age limit for marriage is very important because the concept requires biological and psychological maturity (Umah, 2020, p. 108).

UNICEF defines early or child marriage as formal or informal before age 18. Globally, more than 650 million women are married before the age of 18. It is estimated that 12 million girls under 18 are married each year. Overall, the proportion of women who marry as children has decreased by 15% in the last decade. More than 150 million additional girls will be married before their 18th birthday by 2030. Child marriage is most common in Africa and Asia, between 50% and 60% in all Sub-Saharan Africa. The countries with the highest absolute number of child marriages are India, Bangladesh, and Nigeria totaling 15,509,000, 4,451,000, and 3,538,000, respectively. Indonesia is ranked 8th among the countries with the highest absolute child marriages since 1,408,000 women between 20 to 24 are married before 18. (Ma'rifah et al., 2019, p. 18). The concept realizes the ties of kinship between relatives for family relations. Following the theory of customary law. This law is intrinsic to the life and custom of indigenous peoples and local communities. The constituents of "custom" and "customary law" depends heavily on how indigenous peoples and local communities perceive these concerns. Custom is a rule of conduct obligatory on those within its scope and established by prolonged usage. It should be immemorial, specific, and reasonable, obligatory, and appealing to Statute Law. General customs are related to the whole country, while customs use certain traits. Local customs are related to some specific regions of the country (WIPO, 2022).

The impact of child marriage is related to reproductive health. In almost all study areas, girls who marry at a young age have the potential to experience high-risk pregnancies. Another impact felt is the threat to mental health. Additionally, child marriage also hurts girls, such as being vulnerable to domestic violence. According to Plan's findings, about 44% of girls who marry early experience domestic violence (KDRT) with a high frequency. Meanwhile, about 56% experienced domestic violence at a low frequency. Child marriage also impacts reproductive health since girls aged 10-14 years are five times more likely to die during pregnancy or childbirth than girls aged 20-25. The data above shows that child marriage places women in a vulnerable group related to their reproductive health and sexuality (Reni, 2014, p. 2). Early childbearing leads to several medical problems, such as bleeding, miscarriage, and fetal death in the mother's womb (Dyah, 2022, p. 1). Marriage at such a young age, primarily forced by an unstable economic and immature mental and physical background, is not a priority regarding knowledge about reproductive health. Most likely, their primary objective is to generate revenue due to a lack of funds (Kinasih et al., 2019, p. 132).

⁴¹Based on the results of the study, the impact of child marriage in the Sea Tribe of Kelumu Island, Lingga Regency, are women who participate in child marriages have not been able to manage their households because of their very early age, there has been domestic violence (KDRT), but this is very rare because the tribal people the sea are always nurtured spiritually. Regarding the case, this violates Law Numbers 23 of 2001 on the Elimination of Domestic Violence enacted on 22 September 2004. This law prohibits domestic violence against people within the scope of their household using physical, psychological, sexual violence or neglect. About 60% of problems occur during birth, such as mothers experiencing bleeding, children born dead, miscarriages, and malnutrition. Children practicing early marriages drop out of school because they have focused on taking care of household matters. In everyday life, humans always have problems and try to solve the problems they face. (Pat et al., 2021, p. 172). The impact shows that protecting children from child marriage is very dangerous. This can take away their rights to health and education. Child protection is all activities to guarantee and protect children, allowing them to live, grow, develop, and participate optimally with human dignity and protection from violence and discrimination. Parents, family, community,

state, and local government should³¹ guarantee, protect, and fulfil the child's rights. Law No. 35⁶⁰ of 2014 on Child Protection Article 26 affirms that parents have an obligation and

responsibility to care for, maintain, educate, and protect children. It is also affirmed that parents are obliged to prevent early marriage.

In this case, parents should play an essential role in preventing child marriage. However, based on the study's results, the practice of child marriage has been entrenched and passed down from generation. The dangers of child marriage are not well understood due to a lack of educational background. The most significant factor that causes child marriage to occur is low parental education and customs that have been maintained since the beginning.

The phenomenon is undoubtedly a concern because children are buds, potential, and the younger generation has a strategic role with special characteristics that ensure the continuity of the existence of the nation and state. Children's rights are contained in the 1945 Constitution of the Republic of Indonesia and the United Nations Convention on the Rights of the Child. The provisions of Article 28B paragraph (2) of the Constitution of the Republic of Indonesia state that every child has the right to survive, grow and develop without violence and discrimination.

Law Number 39 of 1999 in Chapter III of Human Rights and Basic Human Freedoms in the Tenth Part regulates children's rights. The section provides regulatory provisions as outlined in 15 (fifteen) articles. Furthermore, article 52, paragraph (2) states that children's rights and interests are recognized and protected by the law. The Unitary State of the Republic of Indonesia guarantees its citizens' welfare by protecting children. The Indonesian government established Law Number 23 of 2002 on Child Protection to guarantee the welfare of children. Several changes are carried out to certain articles to adjust certain provisions. In addition, Law Number 35 of 2014 on amendments to Law Number 23 of 2002 on Child Protection was promulgated.

The Law on Child Protection regulates the rights and obligations of children. Rights are universal and owned by the rich, poor, and male and female (Gede et al., 2022, p. 81). Articles containing provisions regarding children's rights in Child Protection have many similarities with Human Rights. The Law on Child Protection also regulates the obligations to be conducted. The impact of the phenomenon of sea tribal child marriage in Kelumu, Lingga Regency, causes the non-fulfilment of children's rights in the fields of education, health, and acts of domestic violence. This does not reflect the protection from various aspects of children's rights regulated in the protection law. In the context of enforcing regulations, legal protection is given to a subject by the rule of law, both written and unwritten. In essence, everyone has the right to protection from the law. All legal relationships should obtain protection to provide justice, order, certainty, benefit, and peace (Shahrullah, 2019, p. 61).

According to Satjipto Rahardjo, the purpose of legal protection is to safeguard human rights violated by others (Gunawan & Irrynta, 2022). Meanwhile, CST Kansil stated that it provides mental and physical security from distractions and threats from any party. Based on various experts' opinions, it can be concluded that legal protection is a series of efforts to protect the community's rights. Therefore, every community can enjoy their rights as regulated in the legislation. Philipus added that legal protection is about efforts to assist the subject.

From the results related to the impact of child marriage on the Sea Tribe of Kelumu Island, protection efforts have been carried out even though they have not been maximized. These include guidance from local religious leaders regarding living a married life to minimize cases of domestic violence. However, children's educational rights cannot be fulfilled after marriage. There are always issues, such as malnourished children, infant mortality, and difficulty in

delivery. Therefore, the birth process of the Sea Tribe children is conducted in the public health center (*puskemas*) to ensure complete immunization is administered to avoid malnourished children. The protection efforts have been carried out but have not been maximized due to unfulfilled rights.

4. Conclusion

The Sea Tribe is an indigenous people in the Riau Islands Province. Kelumu Island is found in Lingga Regency, and the phenomenon in the tribal community is a culture of child marriage that has been carried out for generations. The implementation of the marriage in the marine tribal community is classified as ineffective when measured by Soerjono Soekanto's Theory of Legal Effectiveness. This is due to the weakness of several existing factors, namely legal factors, law enforcement, infrastructure, maturity, and local communities.

The marriage of Sea Tribe children has negative consequences, including domestic violence, the loss of educational rights, high maternal death rates during delivery, and malnutrition. Therefore, the impact of early marriage eliminates many children's rights, especially in education and health.

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