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Implementation of Marriage Law and Impacts on The Marriage of Sea Tribal Children in Lipan Island

Winsherly Tan¹

¹Assistant Professor at the Faculty of Law, Batam International University, Indonesia

¹School of Law, Faculty of Law, Universitas Pelita Harapan

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Abstract

Child marriage is a case that still occurs in Indonesia, including in the marine tribal

community on Lipan Island, Lingga Regency. However, Indonesia already has a set of regulations governing marriage and child protection. This study aims to, first, examine the application of Indonesian regulations regarding marriage to children of the sea tribe. Second, to elaborate on the impacts that occur as a result of the practice of child marriage of sea tribesmen. The method used is empirical legal research. Sources of data come from primary data and secondary data. There are two (2) legal theories used to analyze the research problem, namely the Theory of Legal Effectiveness by Soerjono Soekanto and Theory of Legal Protection by Muchsin. The results of the study indicate that the application of regulations regarding marriage has not been effective when measured by the theory of legal effectiveness and is not in accordance with the meaning of legal protection proposed by Muchsin. There are several impacts resulting from child marriage, namely the non-fulfillment of children's rights in the fields of health and education. Therefore, it is necessary to make changes to the regulations regarding marriage regarding the opportunity to carry out child marriages with parental permission, in addition to improving the quality of education for the Sea Tribe community on Lipan Island.

A. Introduction

Marriage is a relationship between a man and a woman who live together and are justified by God.¹ Marriage is something very important for humans. Therefore, all aspects of life regulate marriage issues that apply to society.²

On an international scale, cases related to child marriage have decreased. Based on UNICEF, that around 21 percent of girls had underage marriages. However, in recent years,

about 25 million child marriages have been prevented. However, cases of child marriage always occur, especially in South Asia and Sub-Saharan Africa.³

Indonesia have a set of regulations to regulate about marriage, namely Law Number 16 of 2019 concerning the Amendment of Law Number 1 of 1974 concerning Marriage. According to Article 1 Law Number 1 of 1974 concerning Marriage, Marriage is a sacred relationship that binds the bride and groom as husband and wife with the aim of forming a household that brings happiness.

Based on the "Belief in the One and

1 Aisyah Ayu Musyafah. "Perkawinan Dalam Perspektif Filosofi Hukum Islam." Jurnal Crepido 2, no. 2, (2020) : 112. <https://ejournal2.undip.ac.id/>

2 Santoso. "Hakekat Perkawinan Menurut Undang-Undang Perkawinan, Hukum Islam dan Hukum Adat." Yudisia 7, no. 2, (2016): 412-434.

3 Badan Pusat Statistik. *Pencegahan Pernikahan Anak: Percepatan yang Tidak Dapat Ditunggu.* Child-Marriage-Report-2020.Pdf, 2020.

Only God". Article 7 Paragraph (1) also stipulates that "marriage shall only be permitted if a man and a woman have reached the age of 19 (nineteen) years old".

Marriage is something sacred in every human life. Therefore, it takes a mature readiness in entering the married life. Readiness in question is readiness in terms of physical, psychological, mental, economic and so on.

In addition, it is through the family that a small group in a country will begin. Therefore, Starting a marriage both legally and religiously is very important. Therefore, unregistered marriages (siri marriages) are not allowed.⁴

Marriage is something important so it must be done legally. however, in practice, marriages in Indonesia are often carried out illegally. Siri marriage is a type of marriage that is believed by the sea tribe. This can happen because of the low education of the sea tribe community about the importance of a marriage.

The Sea Tribe is a name to categorize an indigenous people. Previously, they were a nomad who moved from one island to another island. The life of marine tribes is still very much tied to the marine environment. in addition, they are still very traditional and have no religion or do not believe in any religion.⁵

This study investigates the case of child marriage of the sea tribe on Lipan Island, Lingga Regency, Riau Archipelago Province. In Lipan Island, there are three (3) sub-communities (*Rukun Tetangga/RT*). The object of this study focussed on the Sub-Community 3 (RT 3) of Lipan Island which consisting of 33 Household Heads and having around 130 people.

Based on interviews with Mr. Mail as an elder of the Laut Tribe and Mr. Li as the Head of Tribe 3 on Lipan Island, he explained that

4 Rahmawati, Atik. *Kehidupan Suku Laut di Batam: Fenomena Perkembangan Kebijakan di Pulau Bertam*.

5 Elsera, Marisa. "Masalah Identifikasi dan Upaya Pemberdayaan Suku Laut di Linau Batu Tanjungkelit, Kabupaten Lingga, Provinsi Kepulauan Riau." *SOSIOGLOBAL: Sociought and Research Journal*, 3, no. 2, (2019) :2. <https://doi.org/10.24198/jsg.v3i2.21054>

since ancient times the Laut Tribe on Lipan Island has practiced child marriage.

The sea tribes who carry out these marriages are mostly children at the age of 13 to 15 years. This has become a tradition carried out from generation to generation until now. This tradition is maintained because this tradition is a form of proof of gratitude to the prospective groom for his services to the prospective bride's family. This is what causes the bride's family to give her daughter as a sign of gratitude for the kindness of the groom's family.

This case of child marriage in the sea tribe violates the provisions or regulations regarding marriage in Indonesia. In addition, this case of child marriage also violates the regulations on child protection because the subject in the marriage is a child. One of the rights of children that is violated in this case of child marriage is the right to get a proper education.

This is because most of those involving the married child are reluctant continue his/her study anymore. It also inclines to violate the child's health rights when she must give birth to a baby because her womb is not strong enough to undertake the delivery process.¹⁰ Children's rights protection is specifically regulated by Law Number 35 of 2014.

The existence of the law is to provide guarantees and protection for children and the rights inherent in them. Article 26 of the Law explicitly states that parents are obliged and responsible for preventing child marriage or underage marriage. Accordingly, parents shall have an obligation in preventing their children to perform child marriage.

Based on the phenomena, the researcher posits two (2) research questions for this study. *Firstly*, it questions about the implementation of Law Number 16 of 2019 concerning the Amendment to Law Number 1 of 1974 concerning Marriage in the Sea Tribe people in Lipan Island, Lingga Regency, Riau Islands Province. *Secondly*, it questions about the impacts of the child marriage in Lipan Is-

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land, Lingga Regency of the Riau Islands Province.

B. Research Method

The empirical juridical method is the choice in this study⁶. The types of data used in this research are primary data and secondary data. Primary data comes from several informants. Meanwhile, the secondary data consisted of the primary legal materials. Hence, they were entirely analysed and subsequently they were organized systematically to withdraw a conclusion.

C. Research Result and Discussion

1. The Implementation of Law Number 16 of 2019 concerning the Amendment to Law Number 1 of 1974 concerning Marriage in the Sea Tribe in Lipan Island Lingga Regency of the Riau Islands Province

Basically marriage is a human right, but in virtually every human activity continue to be governed by the Act, as well as marriage.⁷ At a philosophical level, the marriage bond is an inner bond between two human beings based on the religious beliefs of each husband-wife.⁸

Marriage is very important for two people because through a marriage will produce offspring that can benefit the nation and state. Therefore, the implementation of marriage is regulated by religion and government.

Since marriage is a vital matter, it must be performed legally. Nonetheless, in reality, child marriage practice still occurs in Indonesia. The case of child marriage is a very dangerous thing for the child who does the marriage.

There are various negative impacts arising from the practice of child marriage be-

cause the subject of the marriage is a child who is psychologically immature and has not been able to manage the household.⁹

Child marriage practice is inclined to occur in Indonesia. According to the data from the Central Bureau of Statistics (BPS), it is shown that, from 2001 to 2009 in urban areas, around 29% of young girls gave birth to a baby at the age of around 15 to 19 years old. In rural areas, the percentage was even higher, namely, 58% of young girls gave birth to a baby at the age of around 15 to 19 years old due to child marriage practice. Based on the data from UNICEF, there has been a decreasing trend related to child marriage practice in Indonesia from 2008 to 2018; however, the decrease was still categorized as slow. In 2008, the prevalence of child marriage was 14.67 percent, but, in the following decade (in 2018), the prevalence only decreased by 3.5 percent to 11.21 percent. Around 1 out of 9 females at the age of 20 – 24 years old have their first marriage before reaching the age of 18 years old.

Child marriage practice occurring in many areas of Indonesia generally has the same reasons. Firstly, pre-marital adolescent sexual behaviour (adolescent sexual behaviour outside of marriage) leads to a child marriage practice. Secondly, the applicable culture in a community believes that 16 years old girls are mature enough to get married.¹⁰

Indonesia has a regulation to govern marriage, namely Law Number 16 of 2019 concerning the Amendment to Law Number 1 of 1974 concerning Marriage. Article 2 regulates the valid requirements of a marriage, namely "(1) marriage is valid if it is done based on each religious law and belief and (2) every marriage is registered according to the applicable laws." It is also provided by Article 6 that "(1) marriage shall be based on the agreement of both parties, (2) to conduct marriage, someone who has not reached the

6 Marzuki, Peter Mahmud. *Penelitian Hukum. Kencana*, 2010.

7 Rina Shahriyani, Tresia Violita. "Perlindungan Terhadap Anak Dari Perkawinan Tidak Tercatat

Berdasarkan Kompilasi Hukum Islam dan Hukum Perdata". *Journal of Judicial Review*, 16, 1, (2014): 151. <https://journal.uib.ac.id/index.php/jjr/article/view/145>

8 Adi Nur Rohman. "Prophetic Law Accentuation in Marriage Regulations in Indonesia: Effort to Maintain Family Resilience During The Pandemic".

Jurnal Pandecta, 17, 1, (2022): 122. <https://doi.org/10.15294/pandecta.v17i1.35516>

- 9 Mai, Jessica Tiara. "Tinjauan Hukum Perkawinan Anak Menurut Undang-Undang Nomor 1 Tahun 1974." *Lex Crimen Journal* 8, no. 2, (2019): 114. <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/download/25661/25313>
- 10 Surmiati, Ali. "Pernikahan Anak di Indonesia Berdasarkan Perspektif Pemerintahan dan Agama serta Isunya"

age of 21 (twenty one) years old shall get permission from his/her parents, (3) when one of the parents is passed away or cannot state his/her wish, the permission that is mentioned in Paragraph (2) of this Article can be obtained from a parent who is still alive or a parent who can speak up his/her wish, (4) if both parents are passed away or cannot speak up their wish, the permission can be obtained from a guardian who raises them or a family member who is in a straight line upward (blood relation) as long as they are still alive and can speak up their wish, (5) when there is a deviation among people mentioned in paragraph (2), (3), and (4) in this article, or someone or more people among them do not express their opinion, the court where the people will hold the marriage as their request can give a permission right after hearing the people in paragraph (2), (3), and (4) in this article. (6) the regulations, from paragraph (1) to paragraph (5) in this article, are applicable as long as the religious law and the belief of the person do not say different things."

Yet, some changes have been made relating to the age for marriage in the recent Law as it is mentioned under Article 7 that the age for females and males who want to get married is 19 years old. However, if the relevant people want to hold marriage when they are still below 19 years old, their parents can ask for a dispensation from the court by stating the urgent conditions. Nevertheless, in the abovementioned law, there are no further elaborations pertaining to the category or the definition of "urgent condition".

Cases of child marriage still often occur in rural areas where education is still very low. This also happened to the tribal marine community on Lipan Island, Lingga Regency with low education.

If you refer to history, it shows that the Sea Tribe is a native tribe that lives in Lingga Regency, Riau Islands Province.

The Sea Tribe people are a group of people who have the same characteristics, namely they are people who live around the sea area, often move and settle in a boat that has been used as their residence.¹¹

11 Haryono, Supentri. "Sosial Interaksi Masyarakat

Based on research, it shows that the marine tribes of Lipan Island have also lived in boats and moved places. But in 1985, the tribal people of the sea had lived in a hut built by the sea. Until now, tribal sea communities still live in houses built on the beach or sea.

There are 33 Heads of Families on Lipan Island, all of whom have embraced Christianity. So they were all under the tutelage of a pastor in a church built on the island of Centipede. The role of religious leaders here is very important because they not only provide spiritual needs but also participate in human development.

Based on the results of interviews with religious leaders on Lipan Island, he also stated that the practice of child marriage had occurred since the first time he served there. This has been entrenched from generation to generation.

Child marriage practice has been held for a long ago due to the following factors:

1. Cultural factors. The legal culture that is maintained by the marine tribal community is a legal culture that is very much at odds with positive law. They still believe that the best way to repay kindness is to give up their daughters for marriage at a minor age.
2. Matchmaking factor. The families of the bride and groom are about to pair their child with another child to enter into the marriage. In this case, the matchmaking will be carried out when the child has grown up, but his age is still categorized as a child by law.
3. Adolescent Sexual Behavior. The behavior of the youth in the sea tribe has also deviated. When they grow up and understand the meaning of dating or dating, they will reflect on their partner to live together. For that reason, they have also been married at a young age so as not to become the byword of the wider community.
4. Unemployment factor. These factors also encourage the occurrence of child

Suku Laut di Concong Luar Indragiri Hilir-Riau." *SOSIAL HORIZON Journal: Journal of Social Education*, 3, no. 1, (2016): 93. <http://dx.doi.org/10.31571/sosial.v3i1.269>

marriages because the women of the sea tribe on Lipan Island are their movement to still be parents if they are not married.

5. Education Factor. A long time ago, the Sea Tribe people could not read and write, and they even did not know Indonesian. The language they used was their tribe language. However, after establishing an Elementary School in Lipan Island by the government, nowadays, the kids go to school to study in the Elementary School. Nevertheless, the school level available in Lipan Island is only Elementary. Meanwhile, if they want to continue their study to a higher level, namely junior high school (SMP) and senior high school (SMA), they must go to the other islands. This, eventually, makes 80% of the Sea Tribe children in Lipan Island are elementary graduates only. Lack of education also becomes one of the factors to promote a child marriage practice among the Sea Tribe people.

Based on the result of an interview with Ptr. Noch Lumampouw, he stated that, to date, child marriage practice still occurs due to the abovementioned factors. For example, in 2020, there were four (4) couples who conducted a marriage when the bride was only 17 years old and an elementary graduate. The four (4) couples have lived in the same house for a long time so that Ptr. Noch Lumampouw as the religious leader and the village head implemented a solution, namely marrying those couples based on their religion. However, they will register their marriage at the Civil registration and to obtain a Family Card registration (KK) when the couple has reached the required age as regulated by the government.

In measuring how far the implementation of Law Number 16 of 2019 concerning the Amendment to Law Number 1 of 1974 concerning Marriage, the researcher used the Effectiveness of Law Theory by Soerjono Soekanto. Legal effectiveness means that the

law is considered effective when the people have performed the law as has been regula-

ted and written.¹² Therefore, the meaning of whether a law is effective or ineffective depends on the people's deeds, not on the law. Legal effectiveness focuses on the people's deeds that strongly obey the legal regulations. Legal effectiveness shows a fact that people shall do things that have been regulated by the law. In this case, it is in line with a statement by Achmad Ali, stating that, to know how far the law is effectively implemented, the first thing to be done is measuring how far the people obey the law.¹³ Thus, compliance with the law can be the barometer of law effectiveness as stated by Soerjono Soekanto that measuring the law effectiveness is determined by the people's compliance level with the law.¹⁴

The Effectiveness of Law Theory according to Soerjono Soekanto consists of 5 (five) factors to measure the effectiveness of the law. First, the legal factor or written law; second, law enforcers, namely prosecutors, judges, police officers, and other legal professions that play the roles in enforcing laws; third, facilities and infrastructures that support the law enforcement; fourth, the factor of a community (people), namely the place where the law is applicable or implemented; fifth, the culture is considered as works, creations, and tastes based on human initiative.

If the five factors in the Effectiveness of Law Theory are adopted to examine child marriage practices in the Sea Tribe in Lipan Island, several analyses can be made as follows:

1. Legal factor: Indonesia has Law Number 16 of 2019 concerning Marriage. Nevertheless, the Law remains to have a loophole that may permit child marriage practice. It provides by Article 7 which stating that the parents of bride/groom-to-be can propose a dispensation to the court to conduct a marriage under

¹² Hans Kelsen. *Umum Teori Hukum dan Negara, Diterjemahkan oleh Somardi*. Indonesia. Bee Media Indonesia, 2007.

¹³ Achmad Ali. *Teori Hukum dan Kehati-hatian Yudisial Termasuk Penafsiran Peraturan Perundang-undangan (Legisprudence)*. Kencana, 2010.

¹⁴ Soerjono Soekanto. *Hukum Efektifitas dan Peran Saksi*. Remaja Karya, 1985.

an 'urgent condition'. However, there is no detailed explanation about the category of the urgent condition.

2. The factor of law enforcers: the law enforcers in this regard are the religious leaders that consecrate the marriage. Based on the result of an interview with Ptr. Noch Lumampouw as the religious leader, he admitted that he did not know that there was a clause in the Marriage Law providing a loophole for a child marriage practice since the Law permits parents may propose a dispensation to the court. The same sentiment was also advanced by the public figure in the Sea Tribe, Lipan Island. Therefore, when they discover that underage couple live together in the same house, the religious leaders and the parents of both parties will arrange their marriage based on religious law and make a family certificate when the couple has reached the required age based on the laws and regulations.
3. The factor of facilities and infrastructures: based on the result of the interview, socialization or education had never been conducted for Sea Tribe people in Lipan Island relating to the dangers of child marriage practice. Therefore, they did not know the information about such dangers and the regulation on marriage. This circumstance was also resulted by a lack of information and difficulties in accessing such information.
4. The factor of a community (people). Consequently, they do not have sufficient knowledge of the dangers of child marriage practice. As the result, the performance of child marriage has become a tradition for them. Besides, the existence of adolescent sexual behaviour also leads to child marriage practice.
5. The factor of culture: based on the result of the interview, it was found that one of the factors causing child marriage practice was a culture of proving gratitude between the bride's family and the groom's family that

would result in child marriage practice.

If it is reviewed from the 5 (five) factors of the Effectiveness of Law Theory, it can be ascertained that the implementation of Law Number 16 of 2019 in the Sea Tribe people is not effective because the requirements provided by the five factors under the Theory, namely legal, law enforcers, facilities, and infrastructure, people, and legal culture are not fully met.

2. The Impacts of Child Marriage Practice in Lipan Island, Lingga Regency of the Riau Islands Province

Child marriage is not only regulated by Law Number 16 of 2019 concerning Marriage. However, the prohibition to conduct a marriage is also regulated on Article 26 paragraph 1 stating that "parents are obliged and responsible for: a. nurturing, raising, educating, and protecting the children; b. eliciting children based on their competence, talent, and interest; c. Preventing child marriage; and d. Providing character-building education and moral values dissemination in children".

Indonesian children shall get responsible protection. Hence, Indonesia has a set of laws to govern and provide the protection. The laws evidence that Indonesia has serious attention to child protection. The implementation of child protection is the obligation and responsibility of the state, government, people, family, and parents enclosing the protection in the religion, education, health, and social sectors.¹⁵

Child protection from child marriage practice is vital. Children are the subject that shall be protected since they are the future generations of a nation.¹⁶

The parties who are responsible for giving protection are the state and government, parents, and family. Child protection

15 Noer Indriati, Suyadi, Krisnho K. Wahyoeningsih, Sanyoto. "Perlindungan dan Pemenuhan Hak Anak (Studi Pada Orang Tua Sebagai Buruh Migran di Kabupaten Banyumas)." *Mimbar Hukum* 29, no. 3, (2017): 47. <https://doi.org/10.22146/jmh.24315>.

16 Fajaruddin. "Hukum Perlindungan Korban Pornografi Anak." *Varia Justicia Journal*, 10, no. 2,

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(2014): 23. <https://journal.unimma.ac.id/index.php/variajusticia/article/view/1712/823>

is a set of efforts that is performed to guarantee the security, peace, and wellbeing of children. The protection is given based on the children's needs rationally, effectively, and efficiently.¹⁷

Based on the result of the interview, the child marriage practices in the Sea Tribe people in Lipan Island have negative impacts that must be seriously handled. They are as follows.

1. It affects the babies. Most of the babies are dead. For example, Mr. Anes's wife got married at her 16 years old. She gave birth to 10 children; however, 6 of them were dead right after being born. For females who get married at the age of below 20 years old, if they are pregnant, they will experience problems in their pregnancy and delivery process. (Rina, 2010) However, based on the result of the interview, it was also found that, currently, the Sea Tribe people in Lipan Island were helped by the presence of a public health centre. Thus, when they are going to give birth, they are helped by the medical officers in the public health centre. It is different from what happened previously, if the mothers wanted to give birth, they would be helped by their family only at home and gave birth at home or sometimes the mothers went for asking help from the traditional midwife to help the delivery process.
2. It affects the family's economy. Based on the result of the interview with Mr. Mail, he stated that a couple who perform a child marriage practice generally could not finance their family; hence, they still depend on their parents.
3. It affects education. Based on the result of the interview with Susan, Ipi, Dorkas as the Sea Tribe people in Lipan Island who got married at the age of 16 years old stated that when they were about to marry, they were

still studying in the first grade of junior high school, but after getting married, their stopped going to school because they had to manage household chores. A similar situation was also stated by Mr. Anes and Mr. Mail as the elders of Sea Tribe people in Lipan Island; they stated that the current generations also conducted child marriage practices while their education background was only elementary level, and they did not continue their study because they had to do household chores.

4. It affects the mothers' health. Based on the result of the interview with Mr. Anes and Mr. Mail, they stated that some mothers were dead when delivering their babies. Although there were not many dead cases during the delivery process, this case in fact ever happened.

Based on the negative impacts resulted from child marriage practices, it can be deduced that the practices result in the children lost their health and education rights. It is certainly contrary to Article 44 of Law Number 35 of 2014 concerning Child Protection which explaining that the government shall put an effort to provide health facilities for children and Article 9 which stating that each child has the right to acquire education. Then, if it is analysed using the Legal Protection Theory of Muchisn¹⁸ which stating that there are 2 (two) types of legal protection. They are 1) preventive law, the protection is given before the case occurs (preventative), 2) repressive law, the protection is given after the case has occurred. The protection measure is referred to a sanction. By adopting the Legal Protection Theory as an analytical tool, it shows that the government has not given any preventive and repressive laws against the child marriage case for the Sea Tribe people in Lipan Island. The government must give legal protection by providing a preventive law in the form of 1) providing education related to the dangers of child marriage practice, 2) improving the people's education quality by providing

¹⁷ Muhammad Fachri Said. "Perlindungan Hukum

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Anak Dalam Perspektif Hak Asasi Manusia. *Jurnal Cendekia Hukum* 4, no. 1, (2018): 145. <http://doi.org/10.33760/jch.v4i1.97>.

18 Muchsin. *Perlindungan Hukum dan Kepastian Hukum Bagi Investor di Indonesia*. Universitas Sebelas Maret, 2003.

□

school facilities from elementary level (*SD*), junior high (*SMP*) up to senior high (*SMA*). Consequently, the people's mindset and their adolescent sexual behaviour can be altered, and their education rights are fulfilled.

D. Conclusion

Indonesia is a country committing to protect children. It is reflected in the establishment of Law Number 35 of 2014 concerning Child Protection. Nonetheless, the case of violating children's rights still occurs in Indonesia, for instance, the child marriage practice in the Sea Tribe people in Lipan Island, Lingga Regency, the Riau Islands Province.

Based on the result of this study, it is found that a child marriage practice has been occurring since a long time ago and it has become a tradition until now. The majority of females at the age of around 15-16 years old have already got married. This is because of several factors, namely cultural factors, matchmaking by parents, unemployment, education, and adolescent sexual behaviour. Explicitly, Indonesia has a law governing marriage, namely Law Number 16 of 2019 concerning Marriage. However, when the Effectiveness of Law Theory by Soerjono Soekanto is adopted as an analytical tool to measure the effectiveness of this Law, it is found that it still has many weaknesses; especially its legal factor still gives many opportunities to conduct a child marriage practice. This is provided by Article 7 of the Law which stating that underage marriage can be conducted if the groom's/bride's parents propose a dispensation to the court under a condition that there is an urgent condition. Cultural and community factors are important factors that also affect child marriages that can occur in the marine tribal community. The weakness of cultural and community factors is certainly a big problem.

The marine tribal community is not a society that has a good education or adequate knowledge to understand the dangers of child marriage. Then the case of child marriage has become an ingrained tradition so that it is considered normal and not dangerous.

This is quite complicated because changing the legal culture is not easy.

They are infant and maternal mortality when delivering babies and the loss of children's rights in acquiring education. Hence, there are some suggestions or recommendations to be made here. **Firstly**, Law Number 16 of 2019 concerning Marriage should be revised without giving any room for a child marriage practice. **Secondly**, the education quality for the Sea tribe people in Lipan Island should be improved by providing school facilities from elementary level, junior high level to senior high level because it can change people's mindset. **Thirdly**, there is an urgent need to disseminate and educate the Sea Tribe people regarding the dangers of child marriage practices.

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