

Child Marriage in the Shadow of Custom: The Construction of Islamic Law in the Siala Andiang Mala Tassiala Community in Polewali Mandar

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Abstrak: Penelitian ini bertujuan untuk menganalisis konstruksi hukum Islam terhadap praktik perkawinan anak dalam masyarakat adat Siala Andiang Mala Tassiala di Kabupaten Polewali Mandar, serta mengkaji keabsahan dan akibat hukum yang ditimbulkan dalam perspektif hukum positif Indonesia. Fenomena perkawinan anak dalam masyarakat ini menunjukkan adanya interaksi yang kompleks antara hukum adat, hukum Islam, dan hukum negara, yang dalam praktiknya seringkali menimbulkan ketidaksesuaian normatif. Penelitian ini menggunakan metode kualitatif dengan pendekatan normatif-empiris (socio-legal research), melalui pengumpulan data primer berupa wawancara dengan tokoh adat, tokoh agama, masyarakat, dan pemerhati hukum, serta data sekunder berupa peraturan perundang-undangan dan literatur ilmiah terkait. Hasil penelitian menunjukkan bahwa dalam perspektif hukum Islam, praktik perkawinan anak memperoleh legitimasi melalui pemaknaan konsep baligh yang cenderung dipahami secara biologis, tanpa mempertimbangkan aspek kematangan psikologis (rusyd). Sementara itu, hukum adat berperan dominan dalam melegitimasi praktik tersebut melalui konsep siri' (kehormatan keluarga), terutama dalam situasi kehamilan di luar nikah. Namun, praktik ini bertentangan dengan hukum positif yang mensyaratkan batas usia minimal dan pencatatan perkawinan, sehingga menimbulkan dualisme keabsahan hukum. Akibatnya, anak yang lahir dari perkawinan tersebut menghadapi berbagai persoalan hukum, seperti ketidakjelasan status, keterbatasan akses terhadap hak-hak dasar, serta kerentanan terhadap diskriminasi dan eksploitasi. Penelitian ini menyimpulkan bahwa diperlukan harmonisasi antara hukum adat, hukum Islam, dan hukum positif melalui pendekatan yang kontekstual dan integratif, guna menjamin perlindungan anak tanpa mengabaikan nilai-nilai budaya masyarakat.

Kata Kunci: Perkawinan Anak; Hukum Adat; Hukum Islam; Hukum Positif; Perlindungan Anak.

Abstract: This study aims to examine the construction of Islamic law on child marriage practices within the indigenous community of Siala Andiang Mala Tassiala in Polewali Mandar Regency, Indonesia, and to analyze its legal validity and implications from the perspective of national law. The persistence of child marriage in this community reflects a complex interaction between customary law, Islamic law, and state law, which often results in normative inconsistencies. This research employs a qualitative method with a normative-empirical (socio-legal) approach, utilizing primary data obtained through in-depth interviews with customary leaders, religious figures, community members, and legal observers, as well as secondary data derived from statutory regulations and relevant academic literature. The findings reveal that, within the framework of Islamic law, child marriage is often legitimized through a narrow interpretation of baligh (biological maturity), while neglecting the broader concept of rusyd (psychological and

intellectual maturity). Meanwhile, customary law plays a dominant role in legitimizing such practices, particularly through the concept of 'siri' (family honor), especially in cases of premarital pregnancy. However, these practices are inconsistent with Indonesian positive law, which stipulates a minimum marriage age and requires formal registration. This discrepancy results in a dualism of legal validity, where marriages are considered legitimate under customary and religious norms but lack formal recognition by the state. Consequently, children born from such unregistered marriages face significant legal and social challenges, including unclear legal status, limited access to civil rights and public services, and increased vulnerability to discrimination and exploitation. This study argues for the urgent need to harmonize customary law, Islamic law, and state law through a contextual and integrative approach, ensuring the protection of children's rights while respecting local cultural values.

Keywords: *Criminal Liability; Illegal Cosmetics; Hazardous Substances; Business Operators; Consumer Protection.*



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A. INTRODUCTION

Indonesia as a state of law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia places law as the main foundation in regulating all aspects of social, national and state life [1]. Within this framework, the state has an obligation to ensure that every citizen's actions, including those related to the institution of marriage, are carried out in accordance with applicable law. Marriage, as a fundamental institution in social life, has not only a private dimension but also a public one, as it is closely related to the protection of human rights, particularly the rights of women and children.

Normatively, the regulation regarding marriage in Indonesia has been regulated in Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019. In this provision it is emphasized that the minimum age limit for marriage for men and women is 19 years. The determination of this age limit is a form of legal policy that aims to ensure the physical, psychological, and social maturity of prospective brides and grooms, so that they are able to realize the purpose of marriage, namely to form a happy and eternal family based on the One Almighty God [2].

However, in empirical reality, the practice of underage marriage is still found in various regions in Indonesia, especially in communities that still adhere to traditional values [3]. One interesting phenomenon to study is the practice of child marriage in the Siala Andianga Mala Tassiala indigenous community in Polewali Mandar Regency. In this community, social and cultural constructs play a dominant role in determining marriage practices, even tending to override applicable positive legal provisions in some circumstances [4].

Child marriage in this society cannot be separated from the construction of customary values and evolving religious understanding. From an Islamic legal perspective, there is no rigid age limit as stipulated in positive punishment, but rather, the emphasis is on the aspects of puberty

and readiness (rusyd) [5]. The interpretation of this concept in practice is often influenced by local social and cultural conditions, thus opening up space for legitimacy for the practice of early marriage [6]. On the other hand, in the context of the Siala Andiang Mala Tassiala tradition, child marriage is often viewed as a solution to certain social situations, such as out-of-wedlock pregnancies, which are considered a violation of norms and have the potential to tarnish the family's honor (siri'). Therefore, marriage quickly becomes a social mechanism for restoring the balance of norms and maintaining family dignity [7].

This situation demonstrates the normative tension between state law, customary law, and Islamic law in the practice of child marriage. This lack of synchronicity not only raises issues at the normative level but also has concrete impacts on the legal status of marriage and the protection of children's rights. Unofficially registered marriages result in the failure to fulfill children's civil rights, such as certainty of legal status, inheritance rights, and access to population administration services, education, and health care. Thus, this issue concerns not only the legality of marriage but also closely relates to the protection of children as legal subjects guaranteed by the state [8].

Furthermore, this phenomenon indicates the need for a more than merely legalistic approach, but also a sociological and cultural one, to understand the practice of child marriage in indigenous communities. Harmonizing state law, customary law, and Islamic law is essential to creating a responsive, adaptive, and just legal system. This effort is crucial to ensure that law enforcement does not generate social resistance but is instead accepted and internalized by society as part of shared values. Based on this background, this study aims to analyze the construction of Islamic law on the practice of child marriage in the Siala Andiang Mala Tassiala indigenous community and examine the legal validity and legal consequences arising from a national legal perspective. By using a qualitative, normative-empirical approach through the collection of primary and secondary data, this study is expected to provide academic contributions to the development of Islamic family law studies, while also offering strategic recommendations for policymakers and stakeholders in formulating more effective steps in addressing the practice of child marriage in Indonesia.

B. METHOD

This study uses a normative-empirical approach to analyze the practice of child marriage in the Siala Andiang Mala Tassiala indigenous community, as well as the construction of Islamic law and its implications from a national legal perspective. This research is an empirical legal research (socio-legal research) that views law as a social phenomenon influenced by customary values, culture, and religious understanding. The research location is in Batu Village, Tapango District, Polewali Mandar Regency, which was selected based on the relevance of the phenomenon of child marriage practices in the local indigenous community. The research data consists of primary data obtained through in-depth interviews with traditional leaders, religious leaders, community members, and legal observers, as well as secondary data sourced from laws and regulations, scientific literature, and previous research. Data collection was conducted through interviews, observation, and documentation. Data analysis uses a descriptive-

qualitative method with the stages of reduction, presentation, and drawing conclusions. The analysis focuses on the relationship between customary law, Islamic law, and positive law, as well as the validity and legal consequences of child marriage, particularly regarding the protection and legal status of children.

C. DISCUSSION

1. The Construction of Islamic Law on Child Marriage Practices in the Sila Andiang Mala Tassiala Society.

From an Islamic legal perspective, marriage (nikah) is an institution that not only has a religious dimension but also a strategic social dimension in shaping a civilized society. The primary goal of marriage in Islam is to create a family that is peaceful, loving, and compassionate, which is essentially oriented towards achieving welfare (maslahah) and preventing harm (mafsadah). Therefore, marriage is not merely understood as fulfilling biological needs, but also as a means to maintain the continuity of offspring, social stability, and the protection of human dignity [9]. Normatively, Islamic law does not explicitly stipulate a minimum age for marriage, as stipulated in Indonesian positive law. However, both classical and contemporary scholars agree that there are important prerequisites that must be met, namely, in situations of out-of-wedlock pregnancy, aligh (the age of puberty), and rusyd (the age of puberty). The concept of baligh refers to biological maturity marked by puberty, while rusyd has a more substantive meaning, namely intellectual and emotional maturity and the ability to act responsibly in married life. In this context, rusyd is an important indicator that is often overlooked in practice, even though it is an essential requirement for ensuring the continuity and quality of a marriage.

In the social practices of the Siala Andiang Mala Tassiala indigenous community, the concept of baligh tends to be reduced to purely biological aspects, without considering the psychological and social dimensions inherent in the concept of rusyd. As a result, someone who is physically considered baligh can be immediately deemed fit for marriage, even though they are not mentally and emotionally ready to take on the responsibilities of being a husband or wife. This situation creates space for religious legitimacy for the practice of child marriage, especially when driven by pressing social factors, such as premarital pregnancy.

This phenomenon demonstrates that the practice of Islamic law in society is not merely normative-doctrinal, but undergoes a process of interpretation influenced by the social and cultural context. In this regard, Islamic law undergoes what can be called the social construction of law, whereby the understanding of religious texts is adapted to customary values and the pragmatic needs of society. This interaction between religious norms and customs results in a unique form of religious practice, which in some aspects deviates from the ideal goals of sharia.

Furthermore, when analyzed using the maqāsid al-shari'ah approach, the practice of child marriage in this society actually raises serious problems. The goal of sharia in preserving offspring (ḥifz al-nasl) is not only related to the legitimacy of biological relationships but also encompasses ensuring the quality of the future generation. Similarly, the principle of safeguarding the soul (ḥifz al-nafs) and the mind (ḥifz al-‘aql) requires protection of the

physical and mental health of individuals, including children who are not yet psychologically mature. In this context, child marriage has the potential to cause harm, such as reproductive health risks, loss of access to education, and unpreparedness to fulfill social roles within the family.

Furthermore, in the development of contemporary Islamic legal thought, there is a tendency to reinterpret classical provisions regarding the age of marriage to take into account social changes and demands for the protection of children's rights. Many modern Muslim scholars emphasize that the minimum age for marriage can be determined by the state as a form of contextual *ijtihad* to achieve public welfare. Thus, the minimum age for marriage stipulated in positive law does not contradict Islamic legal principles but rather represents an actualization of sharia values in the contemporary context.

However, in the Siala Andiang Mala Tassiala community, this reinterpretation process has not yet fully occurred. Religious understanding still tends to be textual and influenced by local traditions, so the practice of child marriage is maintained as a social solution considered religiously legitimate. This indicates a gap between the development of modern Islamic legal thought and local religious practices. Thus, the construction of Islamic law regarding the practice of child marriage in this society is the result of a dialectic between normative texts, religious interpretations, and living customary values. This construction does not fully reflect the principles of welfare, which are the primary goal of sharia, particularly regarding child protection.

2. The Role of Customary Law in Legitimizing Child Marriage

Customary law in the Siala Andiang Mala Tassiala community occupies a dominant position as a living system of norms and functions to regulate almost all aspects of social life, including the institution of marriage. The application of customary law is not merely symbolic, but has real binding force, supported by collective community awareness and effective social sanction mechanisms. In this context, customary law is often more adhered to than state law because it is considered closer to the values, traditions, and cultural identity of the local community.

One of the fundamental values that forms the basis of legitimacy in social practices is the concept of *siri'*, namely the honor or dignity of the family that must be collectively maintained. *Siri'* is not merely an ethical norm, but a moral principle with broad social implications. Violations of *siri'*, such as pregnancy outside of marriage, are viewed as a disgrace that tarnishes not only the individual but also the entire family and even the community. Therefore, restoring *siri'* is a top priority in every social action taken.

In situations of pregnancy outside of marriage, immediate marriage, even involving minors, is seen as the most effective mechanism for restoring family honor. This practice demonstrates that customary law functions not only as a regulatory system but also as an instrument for social conflict resolution. From a customary perspective, the legitimacy of a marriage is not solely determined by age or formal procedures, but rather by its ability to restore social balance and avoid more severe social sanctions, such as ostracism or prolonged stigma [10].

Furthermore, the dominance of customary law in the practice of child marriage reflects the character of legal pluralism in Indonesia, where various legal systems customary, religious, and state law operate side by side. In the context of the Siala Andiang Mala Tassiala community, customary law tends to be the primary reference because it holds stronger sociological legitimacy than positive law. This is evident in the community's tendency to conduct marriages based on customary mechanisms without going through formal state procedures, such as marriage registration or requesting dispensation from a religious court.

This phenomenon can also be analyzed through the theory of legal effectiveness, which states that the validity of a law is largely determined by the level of acceptance and internalization of the norms by the community. State laws that are inconsistent with local values tend to encounter resistance, resulting in suboptimal implementation. In this regard, the provisions on the marriage age limit in positive law have not been fully internalized in the legal consciousness of indigenous communities, as they are considered irrelevant to the social needs they face.

However, the dominance of customary law in legitimizing child marriage is inseparable from various structural and cultural issues. From a child protection perspective, this practice has the potential to neglect children's basic rights, including the right to education, health, and optimal psychological development. Children who marry at an early age tend to lack the mental and emotional readiness to live in a household, leaving them vulnerable to conflict, domestic violence, and socioeconomic instability [11].

Furthermore, this practice also demonstrates significant gender inequality. In many cases, girls are the most disadvantaged, as they are more often subjected to early marriage as a consequence of social pressure to maintain family honor. This demonstrates that customary law, despite its strong social function, can in practice reproduce structural injustice, particularly against women and children.

Furthermore, it is important to understand that customary law is not static, but rather dynamic and open to change. Therefore, the necessary approach is not to abolish or negate customary law, but rather to transform its values through cultural dialogue. The involvement of customary leaders, religious figures, and government officials is crucial in encouraging the reinterpretation of customary norms to align them more closely with child protection principles and national law. Normatively, Indonesian positive law, through Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974, has set a minimum age for marriage of 19 years for both men and women. This provision represents a form of state intervention to provide protection for children and ensure that marriages are conducted by individuals who have reached physical, psychological, and social maturity. Furthermore, the law also provides space through a marriage dispensation mechanism by the court as a solution under certain circumstances, while still considering the principle of prudence and the best interests of the child [12].

However, in practice in the Siala Andiang Mala Tassiala indigenous community, these provisions are often not properly enforced. Child marriages continue to be conducted based on customary and religious legitimacy without going through formal procedures established by the state, such as requesting a dispensation from a religious court or official registration

with the relevant agency. This demonstrates a significant gap between positive legal norms (*das sollen*) and the prevailing social reality (*das sein*).

As a result of this practice, marriages lack legal validity from a state legal perspective, particularly because they do not fulfill the administrative requirement of registration. In the Indonesian legal system, marriage registration is crucial because it serves as authentic evidence that provides legal certainty regarding the marital status and legal relationship between the parties. Without registration, the state cannot fully recognize the marriage.

This situation gives rise to the phenomenon of dual legal validity, where a marriage is considered valid under customary and religious law, but is not legally recognized by the state. This dualism is not merely theoretical but has significant practical implications for community life. This uncertainty of legal status impacts various aspects, such as difficulties in obtaining population documents, limited access to public services, and weak legal protection for women and children.

Furthermore, from a civil law perspective, unregistered marriages impair the legal standing of wives and children. Wives in unregistered marriages potentially face difficulties in claiming their rights, such as maintenance, legal protection, and dispute resolution in the event of divorce. Meanwhile, children born of such marriages face challenges in proving their legal relationship with their father, which impacts inheritance rights, guardianship, and legal identity [13].

This phenomenon can also be analyzed through the theory of legal effectiveness put forward by experts such as Soerjono Soekanto, who states that legal effectiveness is influenced by several factors, including legal substance, legal structure, and legal culture. In this context, the provisions on the minimum age for marriage as a legal substance are actually quite clear and unequivocal. However, in terms of legal culture, the Siala Andiang Mala Tassiala community still prioritizes customary values and social considerations over compliance with state law. This suggests that legal culture is a primary determinant of community compliance.

Furthermore, weak legal implementation is also inseparable from structural factors, such as limited public access to judicial institutions, inadequate legal outreach, and minimal oversight by law enforcement officials. Relatively remote geographic and social conditions often present barriers to accessing formal legal services, leading communities to prefer customary mechanisms, which are perceived as quicker, easier, and more appropriate to their needs.

More broadly, this discrepancy between positive law and customary practices reflects the challenges inherent in Indonesia's legal pluralism system. The state faces a dilemma between consistently enforcing national law and respecting customary law as part of the community's cultural identity. However, in the context of child protection, the state has a non-negotiable obligation to ensure that all social practices do not conflict with human rights principles [14].

Therefore, a more integrative approach is needed to bridge the gap between positive law and customary practices. A repressive approach alone will be ineffective without efforts to educate and transform the community's legal culture. The state needs to develop adaptive strategies, such as strengthening the role of traditional and religious leaders as agents of

change, increasing access to legal services, and raising public awareness of the importance of marriage registration as a form of legal protection. Therefore, the discrepancy between child marriage practices in the Siala Andiang Mala Tassiala indigenous community and positive law not only raises legal validity issues but also has broad implications for legal certainty and protection.

One of the most significant consequences of unregistered child marriage is the emergence of serious problems related to the legal status and protection of children born. In the Indonesian civil law system, marriage registration serves a fundamental function as the basis for state recognition of the legal relationship between husband, wife, and child. When a marriage is not registered, this legal relationship is weakened, and in some circumstances, it is even denied full recognition by the state.

Children born of unregistered marriages face potential difficulties in obtaining legal recognition, particularly in proving a civil relationship with their father. Although legal developments through court decisions and administrative regulations have opened up opportunities for recognizing children born out of wedlock, in practice, the process is not simple and often requires burdensome additional proof. This indicates that unregistered marriages continue to place children in a legally vulnerable position [15].

Further implications of this situation can be seen in various aspects of children's lives. First, limited access to population documents, such as birth certificates, is a major obstacle to accessing public services. Birth certificates serve not only as administrative identification but also as a gateway to other basic rights, such as education, healthcare, and social protection. Without these documents, children are at risk of social exclusion from an early age [16].

Second, unclear legal status impacts children's civil rights, particularly regarding inheritance and guardianship rights. In many cases, the lack of proof of legal relationship with the father results in children losing their right to inheritance or proper legal protection. This creates structural injustice that could potentially persist into future generations [17].

Third, children from unregistered marriages are also more vulnerable to exploitation and discrimination. Weak legal protection leaves children without adequate recourse when facing various forms of rights violations, both within the family and in society. The social stigma associated with birth status can also worsen a child's psychological well-being, affecting their self-confidence and social interactions [18].

Furthermore, the psychological impact of child marriage cannot be ignored. Children born and raised in families shaped by early marriage are more likely to face emotional and economic instability. Psychologically immature parents are often unprepared to optimally fulfill their parenting roles, resulting in less-than-ideal parenting patterns. This has the potential to hinder children's cognitive, emotional, and social development in the long term.

From a child protection law perspective, this situation clearly contradicts the principle of the best interests of the child, a fundamental principle in all policies and actions related to children. This principle emphasizes that every decision must prioritize the welfare and future of the child, rather than solely short-term social or cultural interests. In this context, the

practice of child marriage, legitimized by custom, has the potential to sacrifice children's rights in favor of maintaining certain social norms.

Furthermore, the state has a constitutional and legal obligation to guarantee child protection without discrimination, as stipulated in various laws and regulations related to child protection. This obligation includes providing a legal and administrative system capable of ensuring every child has a clear legal identity and equal access to public services. Therefore, social practices that hinder the fulfillment of these rights should be a serious concern in legal and social policies.

However, in the context of the Siala Andiang Mala Tassiala indigenous community, child protection efforts often clash with deeply rooted customary values. This indicates a gap between state legal norms and prevailing social practices. Therefore, the required approach is not only normative but must also consider cultural and sociological aspects for effective child protection efforts.

D. CONCLUSION

The practice of child marriage in the Siala Andiang Mala Tassiala indigenous community in Polewali Mandar Regency is a phenomenon born from the complex interaction between customary law, Islamic law, and positive law. From an Islamic legal perspective, the absence of an explicit minimum age limit results in the dominant interpretation of the concept of baligh (baligh) being used as a legitimation, although it often ignores the aspect of rusyid as a more comprehensive indicator of maturity. This indicates that the construction of Islamic law in practice has undergone adjustments to the social and cultural values developing in society. Customary law plays a very strong role in legitimizing the practice of child marriage, particularly through the concept of siri' (a marriage contract) which prioritizes family honor. Under certain conditions, such as pregnancy outside of marriage, child marriage is seen as a legitimate and even obligatory social solution to restore normative balance and avoid social sanctions. The dominance of customary law indicates that the validity of law in society is determined more by social acceptance than by formal state provisions.

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