

Problems with the islamic legal system regarding child marriages in Indonesia during the covid-19 pandemic period

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DOI: 10.18326/ijtihad.v22i2.155-176

The high number of child marriages during the Covid-19 pandemic period poses problems related to the Islamic legal system in Indonesia. This study aims to describe the problems of the Islamic legal system regarding the phenomenon of child marriages during the pandemic period in Indonesia. This paper is the result of a qualitative research with a socio-legal analysis approach, that is based on Friedman & Hayden's legal system theory. The results of the study show that there are three substantial problems with the Islamic legal system, namely: (1) the problem associated with the legal substance where the Marriage Law stipulates the age of a bride to increase from 16 to 19-year-old as contained in article 7 paragraph (1) of the Marriage Law number 16 of 2019, while at the same time it enables child marriages to be carried out through a marital dispensation request, it acknowledges marital vows (*ithbat*), and there is an absence of legal sanctions for violating the Marriage Law; (2) the problem related to the legal structure of child marriages that is rooted in the formation, enforcement, and development of child marriage law; and (3) the problem of legal

culture in relation to the legal behavior of child marriage, unregistered marriages (*sirri*) for minors, and the lack of social arrangements to promote the culture of marriage at a mature age. Therefore, this paper offers a reconstruction of the Islamic legal system in terms of legal substance, legal structure, and legal culture to minimize child marriage practices in Indonesia.

Tingginya perkawinan anak pada masa pandemi covid-19 menunjukkan adanya problem sistem hukum Islam di Indonesia. Studi ini bertujuan mendeskripsikan problem sistem hukum Islam atas realitas perkawinan anak pada masa pandemi di Indonesia. Tulisan ini merupakan hasil penelitian kualitatif dengan pendekatan analisis sosio-legal. Tulisan ini didasarkan pada teori sistem hukum Friedman & Hayden. Adapun hasil studi menunjukkan bahwa terdapat problem sistem hukum Islam yang meliputi tiga hal; pertama, problem substansi hukum di mana Undang-undang perkawinan menetapkan umur perempuan meningkat dari 16 tahun menjadi 19 tahun sebagaimana terdapat dalam pasal 7 ayat (1) Undang-Undang Nomor 16 Tahun 2019, namun di sisi lain undang-undang juga menawarkan peluang dilaksanakannya perkawinan anak dengan mengajukan permohonan dispensasi kawin, *ithbat* nikah dan tidak adanya ketentuan sanksi hukum bagi pelanggaran perkawinan anak; Kedua, problematika struktur hukum perkawinan anak yang terdapat dalam pembentukan, penegakan dan pembinaan hukum perkawinan anak; Ketiga, problematika budaya hukum yang terdapat dalam perilaku hukum perkawinan anak, perkawinan sirri bagi anak yang belum cukup umur dan kurangnya rekayasa sosial untuk meningkatkan budaya nikah pada usia dewasa. Oleh karenanya tulisan ini menawarkan rekonstruksi sistem hukum Islam baik substansi, struktur maupun budaya hukum untuk meminimalisir perkawinan usia anak di Indonesia.

Keywords: *child marriages; pandemic period; problems; islamic legal system*

Introduction

The increasing number of child marriages during the pandemic period in Indonesia to some extent indicates problems against the Islamic legal system in Indonesia in terms of its legal structure, legal substance, and legal culture (Friedman & Hayden, 2017; Huda et al. al., 2020). This has coincided with the emergence of the Covid-19 pandemic since it first appeared at the end of 2019 until recently and the revision of marital age for women from 16 to 19-year-old. Such revision is stated in Article 7 paragraph (1) Law number 16 of 2019 as an amendment to the Marriage Law Number 1 of 1974.

In 2020, the increase in the number of child marriages in Indonesia was the second highest among the South-East Asian countries, after Cambodia, and was ranked 8th in the world (Pranita, 2021). The Supreme Court's Religious Body (read: *Badilag MA*) also noted that in the period from January to June 2020, there were approximately 34,413 requests for

marital dispensation for minor bride and groom, of which 33,664 cases (97.8%) of these requests were granted by the court. For a comparison in 2019 and before the amendment of the Marriage Law Number 1 of 1974, there were 14,462 requests (Pinem, 2021; Pranita, 2021). According to data from the Central Statistics Agency, there were ten regions with the highest number of child marriages in Indonesia, namely South Kalimantan (12.52%), West Java (11.48%), East Java (10.85%), West Sulawesi (10.05%), Central Kalimantan (9.85%), Banten (9.11%), Bengkulu (8.81%), Central Java (8.71%), and Jambi (8.56%) (Central Bureau of Statistics, 2020).

Until recently, studies on child marriages tend to focus on two aspects. The first aspect discusses legal provisions of child marriages normatively in terms of Islamic, national, and international law (Hasibuan, 2019; Sudantra & Laksana, 2019; Ullah et al., 2021; Ahonsi et al., 2019; Akter et al., 2022; John, Edmeades, & Murithi, 2019; John, Edmeades, Murithi, et al., 2019; Kohno et al., 2019; McDougal et al., 2020; Melnikas et al., 2020; Raj et al., 2020; Rumble et al., 2018). The other aspect revolves around child marriage laws in practice, policies, and local culture of marriage (Grijns & Horii, 2018; Horii, 2020; Musawar et al., 2022; Rahiem, 2021; Rumekti & Pinasti, 2016; Supraptiningsih & Hariyanto, 2019; Supriyadi & Suriyati, 2022; Wantu et al., 2021). Nevertheless, the study of child marriages that includes studies of formal legal law and the practice of child marriages in Indonesia as well as their problems regarding the Islamic legal system in Indonesia has not been thoroughly studied. Therefore, this study is proposed to offer solutions to the problems against the Islamic legal system regarding child marriages that especially occurred during the Covid-19 pandemic period in Indonesia.

This paper aims to close the gap of previous studies which tend to discuss the problems of child marriage from only one legal system. Additionally, this study focuses on child marriages occurring during the Covid-19 period since this phenomenon coincided with the stipulation of a law where the minimum age of prospective brides must be 19-year-old. In particular, this paper investigates three problems with the Islamic legal system which have led to an increase in the number of child marriages during the pandemic period. This paper specifically presents three substantial points, namely: (1) problems of the Islamic legal system in viewing child marriages during the pandemic period; (2) factors that cause these

problems; (3) solutions to improve the Islamic legal system in minimizing the increasing number of child marriages in Indonesia.

Problems with the legal system regarding child marriages during the pandemic period in Indonesia can be investigated comprehensively by studying three main elements of legal system, namely legal structure, legal substance, and legal culture. In particular, this paper is based on three arguments: (1) it is essential to carefully study the substance of Islamic law in order to unpack underlying problems related to the Islamic legal system that governs child marriages and its derivative legal products; (2) structural problems of Islamic law show the roles of the government elements in implementing statutory provisions and producing child marriage legal policies; and (3) a problematic Islamic legal culture leads to emerging problems regarding legal culture of child marriages where marriages are often considered as a solution, in addition to the lack of public legal awareness and social arrangement to minimize child marriages.

Method

This paper adheres to a qualitative research approach to understand the meaning of social and humanitarian issues (Creswell, 2010), namely child marriages during the pandemic period and their problems concerning the Islamic legal system in Indonesia. The Islamic legal system in this research is investigated through the lens of Friedman & Hayden's legal system (2017, pp. 126–127; Huda et al., 2020), which includes legal substance, legal structure, and legal culture. The data in this study were obtained through interviews and documentation. Interviews were conducted with key informants directly or indirectly involved in child marriage practices, such as members of the People's Representative Council (DPR), Religious Court Judges, officers of the Religious Affairs Office (KUA), members of the National Family Planning Coordinating Board (BKKBN), members of the Women's Empowerment Service, officers of the Child Protection Unit, officers of the Population Control and Family Planning (DP3AKB), officers of the Ministry of Law and Human Rights (Kemenkumham), officers of the National Family Planning Coordinating Agency (BKKBN), and village officials. In addition, interviews were also conducted with the subjects of child marriages.

Primary documents collected in this study included the Marriage Law Number 16 of 2019 which amends the Law Number 1 of 1974 concerning marriage, derivative legal products that regulate child marriages, and regional regulations regarding child marriages. Additional documents were also gathered such as child marriage socialization booklets, legal services booklets from the BKKBN and the Ministry of Law and Human Rights, decisions issued by the Religious Court regarding marriage dispensation, document on child marriage figures, literature and articles related to child marriages. Through a constructivist paradigm, the gathered data were scrutinized using philosophical and sociological lenses to reveal their meanings (Denzin & Lincoln, 1994). The data were then interpreted, categorized (Creswell, 2010; Denzin & Lincoln, 1994), concluded, and presented as a whole.

Problems of the Islamic legal system regarding child marriages

According to Lawrence M. Friedman (2017, pp. 126–127), legal system is a legal entity which includes three important elements, namely legal substance, legal structure, and legal culture. Legal substance refers to material and legal norms contained in statutory regulations; legal structure is represented by law-making institutions; and legal culture illustrates the legal behavior of the community. All three are intercorrelated and influence each other in shaping the form and the efficacy of a legal system. In a more detailed explanation, Soerjono Soekanto (Soekanto, 2008) asserts that there are five primary factors that affect a legal system, which include: (1) legal material that contains provisions in favor of upholding the law; (2) competent law enforcers in favor of upholding the law; (3) facilities and infrastructure such as equipment, legal organizations, budgeting, and other support systems that maintain the creation of law enforcement; (4) society where people's attitude, willingness, and legal awareness substantially supports the upholding of the law; and (5) the community culture. These five factors are interrelated and determine the effectiveness of law enforcement towards legal awareness.

In the Indonesian context, the existing national legal system is inseparable from the long history of legal politics where the legal system has been considerably influenced by customary law, Islamic law, and the Dutch law (Ali, 2017). In addition, the formation of legal products has always been shaped by both internal and external factors (Astutik &

Trisiana, 2020). This sort of influence is illustrated in the way child marriages are somehow acknowledged in the Indonesian society since they are considered valid according to religious law.

Problems with the substance of islamic law regarding child marriages

Problems with the substance of Islamic law regarding child marriages during the pandemic period appears in three ways. First is the existence of a marriage dispensation provision that allows legal remedies for those who have not reached 19 years of age. Second is the existence of legal provisions on a marriage by *itbbat* to legitimize unregistered marriages. *Itbbat* becomes an alternative solution for subjects under 19-year-old whose application for dispensation is refused by the Religious Affairs Office (KUA) or for those who seek for a shortcut when conducting a marriage. Third is the lack of legal sanctions for subjects who violate the Marriage Law.

A marriage dispensation as stated in article 7 paragraphs (2) and (3) of The Marriage Law number 16 of 2019 indicates that the 19-year-old minimum age for marriage is not absolute. This article contains a stipulation that prospective bride and groom's parents may take legal action or submit a marriage dispensation application to the Religious Court (Kamarusdiana & Sofia, 2020). The mechanism for taking such legal action is regulated in the Supreme Court Regulations (*Perma*) number 5 of 2019 concerning "Guidelines for Adjudicating a Marriage Dispensation Application." The marriage dispensation provision is also stated in the Compilation of Islamic Law (KHI) article 15 paragraph 2 where prospective brides and grooms who have not reached the age of 21 are required to obtain a permit as stipulated in Law no. 1 of 1974 article 6 paragraphs 2, 3, 4 and 5 (Abubakar, 2019). Consequently, a marriage dispensation is considered to have a substantial impact on the increasing number of child marriages in Indonesia (Judiasih et al., 2018). This shows the government's inconsistency in regulating marital age in Indonesia since it offers alternative legal provisions to the existing marriage law.

The legality of *itbbat* in unregistered marriages that is validated in article 7 paragraph (3) of the Compilation of Islamic Law poses another problem. *Itbbat* refers to a religious-based marriage that is not registered at the Religious Affairs Office (KUA). It is often called

a private marriage or a *sirri* marriage where it may be conducted as long as its conditions and procedures are fulfilled and there are no certain prohibitions affecting the marriage. The conditions for an *ithbat* marriage as stipulated in article 7 paragraph (3) letter (e) are “for marriages carried out by those who do not have a marital restriction according to the Marriage Law number 1 of 1974”, by which this includes a *sirri* or private marriage. The settlement of cases regarding an *ithbat* marriage is also stated in the provision of article 49 paragraph (2) of the Law number 50 of 2009 amending the Law number 7 of 1989 about the Religious Courts, which discusses the competence of the Religious Courts in adjudicating cases at the first level, one of them is in solving marital problems (Oe, 2013). Meanwhile, an *ithbat* marriage for certain communities is believed to be a valid marriage regardless the existence of the Marriage Law in Indonesia (Al Farabi, 2011). For an *ithbat* marriage to be legally acknowledged, the subjects of such marriage may file a case to the Religious Court following the guidelines stated in KMA/032/SK/IV/2006 concerning the Manual for the Implementation of Duties and Administration of Religious Courts Book II.

The lack of clear regulations regarding *ithbat* marriages indicates the government's tendency to allow this kind of marriages to occur as a solution to child marriages when a dispensation request is rejected. In other words, the government's flexibility regarding child marriages through *ithbat* shows its lack of commitment in reducing the number of child marriages. However, a strict marital regulation is somehow problematic as according to Mubarak et.al., (2021) certain communities in Indonesia still view *ithbat* as advantageous in solving problems related to unregistered marriages.

Legal sanctions for parents or guardians who do not adequately provide education and guidance to their children until the minimum marital age (i.e., 19-year-old) are limited, if not absent. Likewise, there are no legal provisions that provide sanctions to the subjects of unregistered marriages and parents who force minors to marry privately through *ithbat*. Thus, the absence of legal sanctions in the Law or its derivative regulations reflects the lack of commitment made by the Indonesian government in reducing the high number of child marriages.

Structural problems of islamic law regarding child marriages

Problems with the structure of Islamic law in relation to child marriages in Indonesia during the pandemic period can be presented in three aspects, namely: the problem related to the formation of legal policies to minimize child marriages, the problem associated with law enforcement especially judges' decisions in resolving child marriage cases, and the problem with legal guidance and socialization.

The problem related to the formation of legal policies or regulations to minimize the number of child marriages is reflected from the government's limited role in pursuing and issuing derivative laws in response to this issue. According to the Judge of the Jayapura Religious High Court, Mustar (Mustar, 2022), following the issuance of the Law number 16 of 2019 regarding the minimum age of prospective brides and grooms, there were no derivative regulations from the central government that provided guidelines to minimize child marriage rates. The only regulation associated with this case was the Supreme Court Regulation number 5 of 2019 concerning Guidelines for Adjudicating Applications for a Marital Dispensation.

Although derivative regulations used to minimize the number of child marriages have not been arranged by the central government, several regional governments have started the initiative to form policies to tackle this issue. The Governor of West Sulawesi, for example, has issued a Circular Letter number 12 of 2019 concerning "the Prevention and Settlement of Child Marriages," followed by a regulation regarding the "Child Protection System" in 2020. This quick response was made because West Sulawesi Province was ranked the fourth highest in the number of child marriages in Indonesia in 2020. Sahari Bulan, the head of the Mamuju District Women's Empowerment and Child Protection Service, explained that a Working Group for the Prevention of Child Marriage Program (P3UA) was specifically established to respond to the high number of child marriages in West Sulawesi (Dinas Kominformasi dan Persandian Kabupaten Mamuju, 2021). Likewise in West Java, the Governor has issued Regional Regulation Number 3 of 2021 concerning "the Implementation of Child Protection."

In East Java, which ranks third in the highest number of child marriages in Indonesia in 2020, the Governor has issued a Circular Letter number 474.14/810/109.5/2021 dated

18 January 2021 concerning the Prevention of Child Marriages addressed to all regents and mayors in this province. In Nganjuk Regency, the local government's agencies such as the Social Service for Women's Empowerment and Child Protection (Dinas PPPA), the Office for Population Control for Family Planning, the Office of the Ministry of Religion (Dinas PPKB), and the Office of the Religious Courts signed a cooperation in tackling child marriages on 28 June 2021. However, such attention and cooperation to minimize child marriage rates have not become a common ground among local governments down to their sub-districts. For example, Taufik (Taufik, 2022), the Chairperson of the Regional House of Representative (DPRD) of Cilacap Regency, seemed to see the importance of derivative regulations regarding the protection of children in marriage only after the researchers interviewed him personally. In East Java, according to a member of the East Java DPRD, Putri (2022), the Circular Letter from the Governor has not been effective due to the lack of socialization and actual follow-up policies at the lower levels of the government. Thus, the government's incomprehensive regulations and the absence of derivative legal provisions are problematic and have hindered the initiative to suppress and minimize the high number of child marriages.

The problem associated with law enforcement is reflected in three aspects, namely the increasing number of applications for marital dispensation in the Religious Courts, judges' decisions that rely heavily on the principle of legal certainty based on the fulfilment of material and formal requirements, and judges' considerations regarding emergency criteria that tend to be 'subjective'. In other words, decisions over requests for a marital dispensation depend on the judges' personal stance in interpreting the text and the context of the requests either in a positivistic or progressive way (Ramadhan & Muslimin, 2022).

In 2017 or before the pandemic period, there were approximately 11,819 marital dispensation requests. This number increased in 2018 to 12,504 requests and in 2019 to 14,462 requests (Pranita, 2021). The number increased significantly in 2020, during the covid pandemic period and after the issuance of a revision to the Marriage Law article 7 paragraph (1) concerning the age of the prospective brides and grooms from the minimum age limit of 16 years to 19 years. From January to June 2020 alone, there were 34,413 requests for a marital dispensation where 33,664 (97.8%) of them were granted

by the Religious Courts (Pinem, 2021). From January to May 2021, Semarang Religious Court granted 92 requests for marital dispensation out of 104 requests (Radar Semarang, 2021). Likewise, there were 17,214 marital dispensation requests or 5.79% out of 302,684 marriages that occurred in East Java from January to February 2021 (Kominfo Jatim, 2021).

The majority of marital dispensation requests were granted as long as they fulfilled formal requirements, administrative requirements, and material requirements, namely the fulfillment of the conditions and procedures of marriage and the absence of a prohibition on marriage (*mawāni' al-nikāh*). In a case where formal requirements were not fulfilled; the Religious Courts would ask the applicants to complete the requirements. Such case was illustrated by Wahib (2022), a judge at Cilacap Religious Court, Munadi (Munadi, 2022), a judge at Semarang Religious Court, and Suhadak (Suhadak, 2022), a judge at Indramayu Religious Court.

In addition to fulfilling the formal and material requirements, judges tend to grant requests for marital dispensation if they are deemed to meet emergency criteria, a condition for filing a dispensation application, which tends to be 'subjective'. For instance, a request for marital dispensation at Gorontalo Religious Court was granted because it was submitted by the prospective bride who was already pregnant (Wantu et al., 2021). A similar case occurred in Demak Religious Court (Fatmawati et al., 2016) and Semarang Religious Court as reflected in the decision number.../Pdt.P/2022/PA.Smg (case number is undisclosed), where the applicant's child was a 13-year-old girl and was already pregnant while the groom was 17-year-old years old. A different decision was issued by Bojonegoro Religious Court through its decision number 10/Pdt.P/2017/PA.Bjn which rejected a request for marital dispensation filed by parents of a prospective groom. The groom was 17-year-old while the bride was 19-year-old and pregnant. Despite the pregnancy, the Court rejected the request based on an argument that the prospective groom was immature both physically and mentally.

Similar to Bojonegoro Religious Court, Pati Religious Court through the decision number 531/Pdt.P/2021/PA.Pati dated September 10, 2021, rejected the application for a marital dispensation based on an argument that there was no emergency condition, and the bride was not pregnant. At that time, the prospective bride' age was 18 years and 9

months while the groom's age was 20 years and 5 months, and there were no conditions that hindered a marriage. In contrast, Semarang Religious Court through the decision number ../Pdt.P/2022/PA.Smg (real number undisclosed) granted a marital dispensation request where the prospective bride's age was 17 years and 9 months while the prospective groom's age was 25 years and 9 months. Such decision was based on the grounds that the bride and groom had a strong desire to get married and they often went out together. To avoid slander and adultery, the judge granted the request and referred to an Islamic principle "*jalb al-masālih wa dar'u al- mafāsīd*" (seeking benefit and eliminating harm). Thus, the different decisions made by judges from these Religious Courts reflect the judges' subjective considerations in determining the emergency condition for granting marital dispensation requests. In addition, the judges' decisions tend to overlook parents' role and obligation in educating and guiding their children towards their adulthood (Mustar, 2022).

Third, the problem related to legal guidance includes budgeting, socialization, monitoring and evaluation, and follow-up activities. For example, there is no specific budget for supporting activities aimed at minimizing the number of child marriages, such as socializing the dangers and negative impacts of child marriages. According to Richadl (Richadl, 2022), a member of the Central Java DPRD, Putri (Putri, 2022), a member of the East Java DPRD, and Zubaedah (Zubaedah, 2022), a member of the Brebes Regency DPRD, the DPRD did not particularly arrange a socialization budget regarding child marriages since the types of socialization programs and their implementation are left to the relevant agencies.

Since the enactment of the Marriage Law Number 16 of 2019, socialization programs to minimize child marriage rates have been carried out in several provinces by local governments and related agencies, such as by DP3AKB in Central Java. However, socialization with guidebooks only started at the end of 2020 in which a pocketbook entitled "*Jo Kawin Bocah*" (no child marriages) was distributed to junior high and high school students or equivalent. Waskito (Waskito, 2022) admitted that existing socialization programs were not comprehensive and very dependent on cadres in the field. Likewise, the Central Java BKKBN carried out socialization programs regarding the dangers of child marriages through PIKR (Youth Counseling Information Center), PIK (Counseling Information

Center), and Genre (Planned Generation) programs. Nevertheless, these programs did not yet reach the output and outcome stages (Antoro, 2022). Similarly, organizations receiving assistance from the National Legal Development Agency (BPHN) of the Ministry of Law and Human Rights were only advised to choose legal counseling themes, one of which could be on child marriages, as explained by the Director of the Islamic Legal Consultation and Assistance Extension Institute (LPKBHI) (Budiman, 2022).

The socialization carried out by the Office of Religious Affairs (KUA) also seems to miss the target. KUA hosts a socialization session called “Course for prospective brides and grooms (*Suscatin*)” intended specifically to those registered their marriages at KUA. The course covers themes that focus mainly on promoting ‘*sakinah* family’ (happy family), while themes regarding the dangers of child marriages are somehow overlooked. In addition, KUA’s religious mentors tend to ignore themes related to child marriages when giving a counseling. The least that KUA does is providing prospective brides and grooms with information about marital age requirements. This description was provided by the Head of KUA Ngaliyan District (Khasanah, 2022), Modin Sutarno (Sutarno, 2022), and the Head of KUA Tanjung Brebes District (Ashari, 2022).

Monitoring and evaluation as well as follow up programs carried out by the government have not been conducted optimally. According to Antoro, national monitoring and evaluation programs are insofar carried out by external parties such as the Indonesian Ministry of National Development Planning (Bappenas) and non-government organizations. Meanwhile, related parties such as the National Family Planning Coordinating Board (BKKBN) only monitors and evaluates socialization programs annually and focuses only on how far the programs have been implemented (Antoro, 2022). Similarly, the Ministry of Law and Human Rights in collaboration with legal aid organizations only focuses on providing non-litigation legal assistance, namely ‘legal counseling’. It does not conduct a monitoring and evaluation program regarding the socialization themes. In other words, the socialization themes rely heavily on the level of understanding and literacy of the frontline legal mentors. Not to mention, a monitoring and evaluation program is carried out relatively once a year and is not based on previous findings to improve existing socialization programs. The focus of the evaluation and monitoring program is rather to

find out whether or not socialization programs have been implemented (Yunianingtyas, 2022). It can be concluded that the main objective of socialization programs is on program implementation. Socialization programs have not been intended to cause paradigm shifts and community legal awareness to minimize child marriage rates in Indonesia.

Problems of legal culture regarding child marriages

According to Jimly Assiddiqie, a legal culture system is the legal culture acknowledged by certain community, namely laws that are created amid the dynamics of people's life or those that develop in accordance with the awareness and legal culture of certain community, one of which emerges in the form of customary law (the people's law) (Assiddiqie, 2006). Problems with the community's legal culture regarding child marriages are reflected in two aspects. First is the existence of the Islamic legal culture which validates minimum marital ages through the concept of puberty. Second is the existence of social arrangement and certain goals to legitimate child marriages through the concept of *ithbat* (unregistered marriages).

A provision in the Islamic law which sets the age limit for marriages to puberty had existed long before the enactment of the Marriage Law Number 1 of 1974. Consequently, a marriage law based on religious law and customary law has taken root in the lives of Indonesian people. According to Islamic law, men and women are allowed to get married once they reach puberty, which is marked by menstruation for women and 'wet dreams' for men (Thaib, 2017). Child marriages based on the puberty concept occurs mostly in rural communities. For instance, Ashari (Ashari, 2022) explained that the high number of child marriages in Tanjung District, Brebes Regency, was to some extent due to parents' deeply rooted understanding and adherence to Islamic law, in which such understanding became a legal culture and had been passed down from generation to generation.

In addition to the deeply rooted understanding of Islamic law, economic factor also played a role in child marriages where parents tended to marry off their children once they reached puberty to reduce their economic responsibilities. This was coupled with a problematic use of gadget by children, especially during the pandemic period, where they could freely access pornographic information and fell into promiscuity, causing a number

of unwed pregnancy cases among these children. Such case was illustrated by Mustaqim, a Judge at the Religious Court of Brebes Regency (Mustaqim, 2020). In a different case, an increase in the number of child marriages, such as in Jepara Regency, was due to the applicants' lack of awareness regarding the revision of age limit requirements. When submitting a marital application at KUA, these applicants had invested their money to carry out a wedding ceremony. In the end, they submitted a marital dispensation request in order to continue the wedding ceremony (Antoro, 2022).

Unregistered marriages (*ithbat*) are part of culture in several areas such as in Sinarrancang Village, Mundu District, Cirebon Regency (Al Farabi, 2011). On the basis of this culture, Li (anonymous), a woman from Jambak Village, Indramayu, got married at the age of 16, divorced at the age of 17, and got married for a second time at the age of 18 in 2022 (Li, 2022). This indicates that the legal culture regarding child marriages and the existence of social arrangement have considerable impact on the increasing number of child marriages, especially after the issuance of the Marriage Law number 16 of 2019 which coincided with the emergence of the Covid-19 pandemic period.

Based on such background, the government, in this case the Minister of Women's Empowerment and Child Protection (PPPA), together with Bappenas and UNICEF "realize" the need for alternative social arrangement by raising cultural awareness to deal with the high prevalence of child marriages in various regions in Indonesia. In a press release from the PPPA on 16 February 2022, it was explained that "it is a demand that must responded immediately and cannot be postponed anymore, by instilling a new mindset, namely building enthusiasm, initiative, and creativity for women and their parents as a social capital for life before marriage" . It can be said that the lack of alternative social arrangement in minimizing the high number of child marriages indicates problems with the legal culture that has existed in the society.

Reconstruction of the islamic legal system regarding child marriages

Problems posed by the Islamic legal system regarding child marriages have hindered the process of reducing the number of child marriages, especially during the pandemic period. These problems appear in three aspects of legal systems, namely the substance of Islamic

law, the structure of Islamic law, and the culture of Islamic law. These problems, to some extent, have negatively affected the initiatives to reduce child marriage rates and prevented the establishment of an alternative legal culture and public legal awareness of the negative consequences arising from child marriages. Verily, these problems can somehow be associated with a significant increase in the number of child marriages, especially after the issuance of the Marriage Law Number 16 of 2019 as an amendment to the Marriage Law Number 1 of 1974 which revises the minimum age of prospective brides from 16 to 19-year-old (Yulkardi et al., 2020).

Problems with the Islamic legal system regarding child marriages have resulted in the ineffectiveness of the existing legal system at the level of legal substance, legal structure, and legal culture (Friedman & Hayden, 2017; Soekanto, 2008). In terms of legal substance, the ineffectiveness appears in the Marriage Law number 16 of 2019, where paragraph 1 regarding the minimum age of marriage for men and women contradicts with paragraph 2 about marriage dispensation for minors based on emergency reasons. In addition, article 7 paragraph 3 of the Compilation of Islamic Law that allows *ithbat* (marital vows) under a condition “marriages are carried out by those who do not have marital restrictions according to the Marriage Law” provides an opportunity for carrying out *sirri* or unregistered marriages between minors. Such conditions of legal substance seem to provide legal concessions that enable child marriages in Indonesia. Not to mention, the religious law that lives in the society considers unregistered marriages between minors as valid as long as they reach puberty. Likewise, the draft of Law on Sexual Violence (TPKS) that regulates punishments for perpetrators marrying minors has not yet been ratified. Whereas Turkey, for example, regulates criminal sanctions in the context of private law, such as criminal sanctions for polygamists (Zaki, 2014).

Second, the ineffectiveness of the existing legal system at the level of legal structure can be seen from the limited role of state stakeholders in establishing, enforcing, and fostering law that can be utilized to minimize child marriage rates. In particular, problems of legal structure include: (1) the lack of initiatives from the legislature and the executive in forming and ratifying persuasive laws, such as regulations that provide sanctions for those violating child marriages; (2) judges' tendency to grant most requests for marital dispensation that

meet formal and material requirements and their subjective decisions in implementing the provisions of the Supreme Court Regulations (*Perma*) number 5 of 2019; (3) the lack of budget arranged by the legislature for supporting socialization programs related to child marriages and their related problems; and (4) incomprehensive programs implemented by BKKBN, DP3AK/ DP3AKB, the Ministry of Law and Human Rights, and KUA, namely programs that are not fully based on findings that lead to the creation of public awareness and legal understanding of the ideal age of marriage.

Problems at the level of legal culture appears in how *sirri* or unregistered marriages are understood and the absence of legal awareness regarding ideal marital ages. This indicates the absence of social arrangement and efforts towards an alternative legal culture that promotes ideal marital ages. The formation of a community-based legal culture is essential for any law to work effectively (Soekanto, 2008). As such, it is critical for the government to promote and encourage the formation of an alternative legal culture that lives in the society (Friedman & Hayden, 2017). Creating an alternative legal culture must be carried out by all parties, including the executive, legislature, and the whole community as each of them plays an important role (i.e., occupant role) in implementing the rule of law. Law, sanctions, social forces, ideology, and politics are all essential in shaping a legal culture regarding adult marriages. All efforts must be oriented towards legal goals (Rood & Seidman, 1980). Thus, the three aspects (substance, structure, and culture) in the legal system play a critical role in minimizing the problem of child marriages in Indonesia.

The increasing number of child marriage cases is an indication that efforts to tackle the issue of child marriages face substantial problems. The effectiveness of legal system in dealing with this issue is challenged by the problematic substance of Islamic law, the existing legal systems acknowledged by the society, the insufficient law enforcement, and the legal culture adhered by the society (Soekanto, 2008). The ineffectiveness of this system somehow indicates the lack of the government's role in enforcing an effective legal system and how the government fails to fulfill the Millennium Development Goals and Sustainable Development Goals number 5 (Soleman & Elindawati, 2019). It is unfortunate since the government should be the initiator for enforcing sanctions and rules, and it holds a central position in guaranteeing the protection of children's rights and protecting them from child

marriage practices (Eleanora & Sari, 2019).

Dysfunctional problems regarding a legal system require an immediate attention from the government to make improvements by reconstructing elements within the legal system that are not functioning properly and effectively (Darmaji, 2014). In terms of legal substance, the reconstruction should be aimed at creating clearer and firmer legal provisions to achieve the main goals of marriage, such as creating clearer legal sanctions for those violating child marriages. It is no less than important to reconstruct the function of legal structure by optimizing the roles of the government's elements in supporting the efforts to minimize child marriages. Likewise, the reconstruction of legal culture should be carried out carefully by restoring the legal cultural system from the upstream to the downstream. In other words, it should involve all social components in shaping and normalizing the culture of adult marriage. In short, it can be said that the Islamic legal system regarding child marriages should be improved by addressing all elemental problems reflected in the three aspects above (legal substance, legal structure, and legal culture).

Conclusion

This study identified essential problems with the Islamic legal system regarding child marriages in Indonesia, especially during the Pandemic period. These problems, to some extent, have caused the increasing number of child marriages and hindered the efforts to minimize such marriages. This increase in the number of child marriages is not responded with thorough reconstruction of the legal substance system, optimization of the work of the legal structure, and promotion of public legal awareness towards a legal culture of adult marriage. The absence of such timely responses has resulted in the ineffectiveness of the existing law in reducing child marriage cases.

Legal reconstruction offers improvements to the three aspects of the Islamic legal system (i.e., legal substance, legal structure, and legal culture) regarding child marriages. The legal substance can be improved by arranging clear legal sanctions against violators of child marriages and derivative legal rules aimed at minimizing child marriages. The legal structure can be enhanced by bringing together all government components, both the executive and legislature, in making policies and enacting laws that are specifically oriented

towards reducing the number of child marriages. Likewise, the improvement of the Islamic legal culture takes place when both the government and the community simultaneously encourage legal awareness of the importance of adult marriage by employing either religious, social, political, or cultural approaches. If possible, social arrangements should be emphasized to create an alternative legal marital culture to significantly reduce, even eliminate, child marriage culture in Indonesia.

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