

THE UNREGISTERED CHILD MARRIAGE ON LUMBANG SOCIETY NORM PERSPECTIVE LEGAL PLURALISM

Cindy Yulia Ariyanti*

UIN Sunan Ampel, Surabaya, Indonesia

Email: cy696442@gmail.com

Novandi Dwi Putra

Universitas Mayjen Sungkono, Mojokerto, Indonesia

Email: novandidwiputra@gmail.com

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Abstract

Unregistered child marriage is still a legal and social problem in Indonesia, legal pluralism in the form of national, customary, and religious legal norms has lived and coexisted for a long time. This research aims to explore the practice of legal pluralism in the case of unregistered child marriage in the Lumbang society, Pasuruan, East Java. This research is important in observing the interaction in legal pluralism. The research method chosen is legal anthropology as a research approach using John Griffiths' theory of legal pluralism. Data collection methods were obtained through interviews, observations, and documents. The results show that unregistered child marriages are carried out for reasons of poverty, community tradition, and flexibility in legal pluralism, especially in religious and customary norms. This practice is considered non-compliant with Indonesia's national law on marriage which logically seeks to provide legal certainty for the protection of every citizen, especially children, but the community has its own choice in following the choice of customary and religious law as a form of non-compliance with national law. In certain circumstances, people will choose national law by registering a marriage when they have children for civil registration. This study contributes to the discourse of legal pluralism that has long lived and coexisted with society while suggesting that state and non-state actors can ensure culturally sensitive interventions while drafting child protection policies.

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* Corresponding Author.

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Introduction

Child marriage in Indonesian national law can be registered/legalized when there are urgent matters through an application for marriage dispensation. Law Number 26 of 2019 jo. Law Number 1 of 1974 concerning Marriage has regulated the existence of marriage dispensation for those who are not yet 19 years old (Lestari & Hendar, 2022). These positive rules are supported by the emergence of Supreme Court Regulation Number 5 of 2019 as a guide for judges to decide marriage dispensation cases (Rajafi, 2020). This shows that there is a legal policy that supports the existence of marriage dispensation even though it opens the gap for child marriage (Rohman, 2023).

The registration of the child's marriage through marriage dispensation has a strong causality with the state registration of marriage. A valid marriage in the eyes of the law is a marriage that is registered as stated in Article 2 paragraph 2 of Law Number 1 of 1974 about Marriage (Zamroni, 2019). The demand for state legitimacy has led to the emergence of marriage registration through marriage dispensation when there is underage marriage. This is intended to bypass the state's age limit for marriage when certain conditions are urgent (Rajafi, 2020). The existence of marriage dispensation, which indirectly legitimizes child marriage, is inversely proportional to the application of norms in Lumbang, Pasuruan, East Java. In Indonesia, there are laws on child marriage outside the national law, these laws coexist in society like adat law and religious law. The existence of these laws is described as a form of legal pluralism, Griffiths states that there are conditions of more than one legal order operating in the social arena. Griffiths explains that the plural legal order in society is divided into 2 (two) types, namely strong legal pluralism and weak legal pluralism (Griffiths, 1986).

This research aims to explore the practice of legal pluralism in the case of unregistered child marriage in the Lumbang society, this exploration is carried out to get an overview of aspects of society's legal practice towards child marriage and pluralistic legal choices that apply in the Lumbang society. The research also identifies social actors in applying norms and views the position of norms regarding child marriage because social actors have a role in practicing their norms.

Several earlier studies show that the practice of child marriage has been practiced for a long time. Some of these research studies are described below: Guowgioksilong's 1969 research describes a study of what the future of marriage law in Indonesia should be. This research touches on marriage law in Indonesia as an empirical fact and its legislation during the Dutch colonial period (Gouwgioksilog, 1969). This research outlines the fact that the emergence of the 1937 Ordinance plan was also used to reduce the number of child marriages in Indonesia during the Dutch colonial period. (Gouwgioksilog, 1969). However, child marriage in Indonesia has become a culture of society so the laws formed will have difficulty in regulating this behavior (Gouwgioksilog, 1969). Then, a 2018 study on the problems of child marriage showed that Indonesian regulations are still inconsistent in preventing child marriage. (Natsif, 2018). This study explains the inconsistency of norms regarding the prevention of child marriage due to different standards in determining the age of the child (Natsif, 2018). Positive law (marriage law and child protection law) in Indonesia has different criteria for what constitutes child marriage according to this study (Natsif, 2018). This study found that child marriage according to Islamic law is also different due to different views on the age criteria for marriage. (Natsif, 2018). However, this study was conducted before the changes to the Marriage Law in 2019 about marriage age. Then, research in 2021 on the role of judges in preventing child marriage shows that judges have a role in preventing child marriage because they have the authority to determine marriage dispensation (Mansari & Rizkal, 2021). The judge in this study tried to advise the

parents of the applicant for marriage dispensation to prevent child marriage. However, judges in enforcing marriage prevention are hampered by existing regulations and facts in Indonesia. These regulations are the 2019 Marriage Law and the strong will of parents and children regarding marriage (Mansari & Rizkal, 2021). Research in 2019 on the factors causing child marriage in Bengkulu shows that child marriage is caused by the social environment, the economic conditions of the society, the culture of the society and the low level of education. This research highlights the ineffectiveness of relevant regulations and policies in addressing/handling child marriage due to the preceding factors (Sunaryanto, 2019). This research shows that the socialization carried out regarding marriage prevention is less than optimal due to social conditions as described in the previous factors (Sunaryanto, 2019).

Based on previous studies, this research will explore the practice and position of several norms in the Lumbang society. In addition, this research will continue Guowgioksilong's study of child marriage (Gouwgioksilog, 1969) and child marriage in Bengkulu (Sunaryanto, 2019). The difference between the two previous studies is that this research explores the complex practice of legal selection in the Lumbang society as well as the concept of legal pluralism (Griffiths, 1986). Then, this research also reflects the application of state norms on child marriage which is still not optimal, as in the research on the role of judges in preventing child marriage (Mansari & Rizkal, 2021), and Research on the problem of child marriage (Natsif, 2018). This research will answer and reflect on some of the problems of child marriage in the pluralism of normative practice in society. This study describes how the practice of legal pluralism of child marriage in the Lumbang society. Then, this study describes how the reflection on the occurrence of child marriage in the Lumbang society.

Research Method

Researchers use empirical legal research as a methodology for this research. Empirical legal research is legal research that explores aspects of legal practice and society (Muhamimin, 2020). This research, using this methodology, will explore aspects of the practice of legal norms regarding child marriages that are not registered in the Lumbang society. This research uses a legal anthropology approach and a conceptual approach. The legal anthropology approach in this research was used to explore the cultural aspects of legal norms practiced by the Lumbang society regarding child marriage (Muhamimin, 2020). Then, a conceptual approach was used to explore the concepts of norms practiced by society regarding child marriage as well as the concept of state norms regarding marriage (Muhamimin, 2020). The theory used in this research is legal pluralism by John Griffiths (Griffiths, 1986). This theory is used to carry out investigations regarding the practices and views of several norms in the form of religious norms, traditional/folk law norms, and state norms in Lumbang society, as the norms in society are complex, according to Griffiths (Griffiths, 1986). In addition, this theory is used to reflect several views of complex legal norms regarding child marriage in Lumbang society (Griffiths, 1986). The empirical approach used in this research is qualitative. This approach shows that this research explores the data in depth (Abdussamad, 2021). The technique used in the qualitative approach and data management for this research is data reduction. This technique is used to reduce/data that is relevant to the approach and theory used (Cresswell, 2019). The place/locus of this research is Lumbang, Pasuruan, East Java. Information about the research location is used by researchers to confirm the location of the research data (Cresswell, 2019). Apart from that, this information becomes a guide and boundary for the area explored by researchers (Cresswell, 2019). The data taken relating to the location of this research is data from the Lumbang sub-district society, the Lumbang sub-district headman, and the Lumbang Religious

Affairs Office (Kantor Urusan Agama or KUA). The data sources in this research are respondents who married children, and their parents. Then, the data source in the form of informants and sources in this research is *Modin* and the Lumbang KUA. The data source in the form of respondents in this study was taken from 3 (three) cases of child marriages that were not registered in Lumbang. The explanation of the data source in the form of respondents is formed in notational form by the researcher as follows: the first case is MA (male) and NA (female) and their parents (MA's parents as PMA and NA's parents as PNA); the second case is XA (male) and DA (female) and their parents (XA's parents as PXA and DA's parents as PDA; and the third case is WA (male) and LA (female) and their parents (WA's parents as PWA and LA's parents as PLA).

Results and Discussions

Legal Pluralism and The Unregistered Child Marriage

Administratively, Lumbang is one of the sub-district areas that is included in Pasuruan Regency. This sub-district has a population of 35,174 people according to census data in 2020. The number of families in this community was 10,499 families in 2020 (BPS Pasuruan, 2021). Data on child marriage in the Lumbang community was extracted through the resource persons *Modin* and the Lumbang KUA. The following is an explanation of how the legal practice of unregistered child marriage in the Lumbang community:

1. Unregistered child marriage cases in MA and NA

MA (male) married NA (female) in 2021 through *nikah siri* or unregistered marriage. MA explained that he married NA when he graduated from elementary school (MA, personal communication, March 2, 2024). NA explained that she got married when she was still in elementary school (NA, personal communication, March 2, 2024). NA and MA explained that their marriage had been planned by their parents (NA, personal communication, March 2, 2024). Child marriage is common around MA and NA. This is evidenced by NA's explanation that she got married because many of her elementary school friends were already married (NA, personal communication, March 2, 2024). NA's statement was affirmed by MA that child marriage has become a custom in their area (Lumbang) (MA, personal communication, March 2, 2024). MA explained that a primary school child before the age of 17 who is not married is a burden on the family and is stigmatized as someone who is not married (will not get married) (MA, personal communication, March 2, 2024). Nevertheless, MA did not want to marry NA, so MA got married based on following the orders of his parents and at the same time carrying out local customs (MA, personal communication, March 2, 2024). MA explained that he had been dating someone before marriage (MA, personal communication, March 2, 2024). However, MA's parents (PMA) forced MA to marry NA so that MA and NA's family relationship would be closer (MA, personal communication, March 2, 2024).

MA and NA's marriage had been planned by their parents. PMA (MA's parent) explained that her son's marriage was done so that he would not be stigmatized (PMA, personal communication, March 3, 2024). The stigma is that children who are not married before the age of 17 are a burden on the family (PMA, personal communication, March 3, 2024). PMA married off her child with the aim that her child would not be a burden on PMA's family (PMA, personal communication, March 3, 2024). PMA explained that unregistered child marriages are common around the community. According to PMA, this is to prevent children from having sexual relations outside of marriage (PMA, personal communication, March 3, 2024). This is because religious norms have legalized sexual relations through marriage. Therefore, these unregistered marriages are conducted through religious norms (or as known as *nikah siri*) (PMA, personal

communication, March 3, 2024). PNA (as NA's parent) explained that the marriage between NA and MA was done due to PNA's closeness to MA's parents. According to PNA, the closeness with PMA helped her to get her daughter married to MA (PNA, personal communication, March 3, 2024). This was so that PNA could carry out customs in the surrounding community. PNA explained that it is customary in the area to marry children before the age of 17 (PNA, personal communication, March 3, 2024).

At the time of the interview, they (MA and NA) were planning to register their marriage with the state (MA, personal communication, March 2, 2024) (NA, personal communication, March 2, 2024). This is done by both of them so that they can take care of the birth certificate for their child later. MA and NA's statements were reinforced by PMA's explanation of state marriage. PMA explained that people who have married will register their marriage with the state to obtain a birth certificate to send their children to school. According to PMA, this is the custom of the community when marrying off their children before the age of 17 (PMA, personal communication, March 3, 2024).

2. Unregistered child marriage cases on XA and DA

XA (male) married DA (female) in 2019. DA got married when she was still in elementary school and was 12 years old. XA married DA because he had been in a dating relationship for 2 years. In addition, XA and DA got married because their friends had been married since before graduated from elementary school (XA, personal communication, March 3, 2024). DA explained that her elementary school friends were married so she was embarrassed if she was not married (DA, personal communication, March 2, 2024). XA married DA with various problems surrounding it. DA's parents (PDA) explained that XA could not provide for her. This is because XA is still unemployed as he graduated from primary school (PDA, personal communication, March 3, 2024). Therefore, PDA as DA's parent explained to both of them that marriage is a binding relationship between the two families and that the matter of maintenance must be discussed together (PDA, personal communication, March 3, 2024). This is why before the marriage of XA and DA, both families (PDA and PXA) held family meetings to determine the place of residence and maintenance of XA and DA after marriage (PDA, personal communication, March 3, 2024).

PXA explained that XA and DA's marriage was based on the willingness of both partners (XA and DA) (PXA, personal communication, March 3, 2024). PXA realized that her son was not yet working, so she could not guarantee DA's housing and livelihood (PXA, personal communication, March 3, 2024). Therefore, PXA conducted a deliberation with PDA to determine where the two (XA and DA) would live after the marriage. However, PDA said that it was also up to XA and DA to decide where to live (at PDA's or PXA's house) (PXA, personal communication, March 3, 2024). PDA explained that the issue of where to live was left to the couple. PDA explained that the deliberation was conducted to find out how serious XA was about marrying his daughter (DA) (PDA, personal communication, March 3, 2024). This was also done because both couples were still in elementary school. PDA was concerned that they were too young to get married although PDA realized that it (child marriage) was common around them (PDA, personal communication, March 3, 2024).

Then, PDA explained that they wanted their children not to get married from elementary school age. However, PDA was worried that her child would commit sexual acts outside of marriage, resulting in pregnancy outside of marriage (PDA, personal communication, March 3, 2024). This concern is also based on the thoughts of the surrounding community towards getting pregnant outside of marriage, which is a big sin. Nevertheless, PDA realized that XA and DA were not yet allowed to marry by the state, so they entered into an unregistered marriage (PDA, personal communication, March 3, 2024). After the marriage, PDA emphasized

to both of them to immediately register their marriage with the state. This was because PDA was concerned that when her daughter (DA) divorced XA, DA would not receive her maintenance rights after the divorce (PDA, personal communication, March 3, 2024). PDA explained that if DA later divorced while XA and DA's marriage was not registered, the child would not receive any property (PDA, personal communication, March 3, 2024). XA and DA eventually registered their marriage with the state. XA entered into a state marriage with DA in 2023 (DA, personal communication, March 2, 2024) (XA, personal communication, March 3, 2024). However, both had difficulty registering their marriage with the state (XA, personal communication, March 3, 2024). This was because they had to first apply for marriage dispensation at the religious court. XA explained that he had to go through this difficulty to get DA's parents' consent (DA, personal communication, March 2, 2024).

3. Unregistered child marriage cases in WA and LA

WA (male) married LA (female) in an unregistered/*nikah siri*. The two were married unregistered in 2019. WA is an elementary school graduate and LA is still in elementary school. WA explained the reason he married LA was because LA's personality was diligent and clean (WA, personal communication, March 2, 2024). WA before marriage was close to LA's brother who was WA's coworker. LA's brother's explanation caused WA to want to marry LA. Therefore, WA tried to marry the LA immediately (WA, personal communication, March 2, 2024). This is inversely proportional to LA's explanation regarding his marriage to WA. LA explained that he did not want to get married first. LA wants to continue her studies until she graduates. However, LA was afraid of the community's stigma that unmarried elementary school children were a burden to her family (LA, personal communication, March 2, 2024). LA explained that the teachings of her parents and the surrounding community show that women only have roles to cook, decorate, and have children (*masak, macak, manak*) (LA, personal communication, March 2, 2024). Therefore, girls should not go to school too high because they will only have to work in the kitchen.

WA's parent (PWA) explained that child marriage is normal in her neighborhood. PWA explained that elementary school children should already be married (PWA, personal communication, March 3, 2024). Nevertheless, PWA realized that child marriage could not be registered by the state. This is because registering a child marriage with the state requires very complicated procedures. Therefore, her child's marriage (WA) was carried out unregistered or by religious norms (PWA, personal communication, March 3, 2024). This is done so that the child's marriage is religiously valid so that it does not cause bad perceptions of neighbors (PWA, personal communication, March 3, 2024). This is reinforced by the explanation of LA's parents. PLA, as LA's parent, explained that PLA married her child unregistered. This was because the community around PLA had married off their children since elementary school age (PLA, personal communication, March 3, 2024). PLA explained that the local community considers child marriage an obligation to avoid bad things (PLA, personal communication, March 3, 2024). This is because children's relationships are now very free, making it possible for them to become pregnant outside of marriage. Therefore, the PLA allowed WA to marry her daughter unregistered (PLA, personal communication, March 3, 2024).

WA and LA will register their marriage with the state when they have children. PWA explained that the need to register WA and LA's marriage with the state was the need of WA and LA's children (PWA, personal communication, March 3, 2024). PWA explained that child marriages in the area will be registered by the state when the woman/wife is pregnant or the child from the marriage is about to enter school (PWA, personal communication, March 3, 2024). WA and LA eventually had their marriage registered by the state in 2021 (WA, personal communication, March 2, 2024).

4. Unregistered child marriage cases based on state and non-state actor's

SA is one of the *Modin* (someone who marries a traditional headman) in the Lumbang community. SA explained that unregistered child marriage has become a custom in the Lumbang community. The Lumbang community marries off their children before the age of 17 in an unrecorded manner (SA, personal communication, March 1, 2024). The Lumbang community considers a 17-year-old unmarried woman to be a burden on the family. SA said that the Lumbang community considers child marriage to be done so that there are no pregnancies outside of a religiously valid marriage. The Lumbang community considers religious norms important in marriage even though it is not registered by the state (SA, personal communication, March 1, 2024). SA explained that some *Modin* practiced unregistered child marriage. Some of these *Modin* cannot be prohibited even though there has been a notification of the prohibition of child marriage (SA, personal communication, March 1, 2024). This is because the community has considered it a custom, so the *Modin* has no power to prevent it. In addition, some *Modin* considers that if they refuse to marry off a child, then the pillars and conditions of a valid marriage according to religion are not fulfilled (SA, personal communication, March 1, 2024).

This is also supported by RF's explanation as one of the state actors in marriage/state *Modin*. According to RF, the Lumbang KUA as one of the places of marriage administration has conducted various socializations regarding the prevention of child marriage (RF, personal communication, February 29, 2024). The socialization collaborates with related parties such as the religious court and local government. However, the practice of unregistered child marriage is still a tradition practiced by the community (RF, personal communication, February 29, 2024). RF explained that unregistered child marriage in Lumbang is high. However, some perpetrators of these child marriages will be registered with the state (through the religious affairs office) when they have children. This causes them to apply for child marriage/ dispensation of marriage at the Religious Court (RF, personal communication, February 29, 2024). Some also applied for marriage legalization at the Religious Court (RF, personal communication, February 29, 2024). RF explained that when they (the perpetrators of child marriage) have been approved for child marriage (RF, personal communication, February 29, 2024). They will repeat the state marriage. This marriage makes their marriage valid by the state. In addition, by obtaining the validity of their marriage from the state, they can have a birth certificate for their child later (RF, personal communication, February 29, 2024).

The information from *Modin*, parents, children, and the KUA religious affairs office shows that there is a strong customary stigma that has become a living rule in the community. Men and women who have not married by the age of 18 are considered a burden to the family, so marriage without being registered at the KUA is a normal practice because it is considered valid according to Islamic law (Maqsood, 2005). Unregistered child marriage is part of the custom of the Lumbang community through the process of marrying off their children from elementary school age as a parental obligation. One of the reasons is their concern about free sexual behavior, so marriage is considered as a way to prevent this behavior (Tabatabaie, 2015). They married off their children without registration from the KUA, until later they registered their marriages because of social demands and legal certainty (Fadhli et al., 2023). Nevertheless, marriage registration is considered an option for the community (Judiasih et al., 2018).

The data shows that the Lumbang community chose to follow religious norms, ignoring national legal norms in registering their marriages. However, when they have children, they register the marriage at the KUA. They have this legal choice because of administrative needs (Ihromi, 1993) so that children can obtain citizenship rights. This shows a symptom of legal pluralism as in John Griffiths' thesis. The custom of unregistered child marriage is part of the law, although it is considered folk law. This classification is because law, as Griffiths understands

it, is a form of social control in the form of norms even though it does not come from the state (Griffiths, 2003). Then, the reason this custom becomes law is that it is stigmatized as a means of “punishment” for the community. This shows the characteristics of law as described by Leopold Pospisil, that law must have certain sanctions (Pospisil, 1971).

The existence of legal culture in Lumbang society shows a correlation with these plural norms that can merge (combine) or diverge (differentiate). These laws can compete for authority (Griffiths, 2003), Legal convergence through Griffiths' review of rules occurred in the Lumbang community because the authority of state institutions and customary institutions (unofficially) had the same scope, namely marriage. The demand for the right to a birth certificate is a strong reason for the convergence of the norms of folk law and state law. This is because birth certificates are one of the rights of citizenship and are made based on state marriage (Adillah, 2016). A marriage that is not legally valid cannot be a reason to issue a birth certificate for a child (Khoiriyah, 2018). However, some legal dynamics through ministerial regulations and Constitutional Court decisions legalized the recording of birth certificates from unofficial marriages (Manurung & Sulastri, 2021). The simultaneous convergence of norms and divergence of norms in the practice of unregistered marriage in Lumbang shows that there is strong legal pluralism (Engle Merry, 2012).

Conclusion

The Lumbang community practices unregistered child marriage as a custom/folk law. However, folk law as a product of legal culture does not stand as a single norm practiced by the community. Islamic Law and Positive Law are still practiced by the Lumbang community in child marriage. The existence of the three laws that apply in marriage in the Lumbang community is a form of legal pluralism according to Griffiths. The pluralism that occurs in this case is based on the convergence of religious-customary norms, convergence of customary-state norms, and divergence of customary norms with the state. The community conducts unregistered child marriage as a convergence of customary religious norms as well as a divergence of norms due to the limitation of the minimum age of marriage by the state. Then, the marriage will be registered by the state when they have children as a form of convergence of state-customary norms. These three dynamics show a strong legal pluralism because all forms of law apply in social practice. This research as a result of its reflection highlights the state legitimization of child marriage that is utilized by the community. In addition, this practice shows the strength of traditional authority and the weakness of the state.

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