A Problematic Issue Of Child Marriage In The Sea Tribe (Suku Laut) In Lipan Island at Lingga Regency

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Abstract: Child marriage is one of the issues that occurred in Indonesia, especially in the Sea Tribe (Suku Laut) community in Lipan Island, Lingga Regency of the Riau Islands Province. Indonesia has a regulation that governs child protection and marriage. This study aimed at, firstly, analyzing the effectiveness of implementing laws on marriage in the Sea Tribe people in Lipan Island. Secondly, it aimed at analysing the impacts of the child marriage practices. The method used in this study was an empirical legal research. The source of data was derived from primary and secondary data. Two (2) legal theories were adopted to analyse the research problems were the Legal Effectiveness Theory by Soerjono Soekanto and the Theory of Legal Protection by Muchsin. The result showed that the implementation of laws on marriage was not effective. The impact caused by a child marriage is the violation of children’s rights in the health and education sectors. Therefore, a revision against Law Number 16 of 2019 concerning Marriage is required, in addition to the improvement of educational quality for Sea Tribe people in Lipan Island.

Keywords: Marriage; Child; Sea Tribe

INTRODUCTION

Marriage is a relationship or a union between a man and a woman presented in a marriage vow stating that both humans live an intimate life together according to the moral law justified by God as the creator of those humans.\(^1\) Marriage is an important aspect of human life. Since it is an important aspect, religions all over the world, public traditions, and governments regulate the marriage matters applicable to society. \(^2\)

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Internationally, the child marriage phenomenon has been decreasing. Based on the data from UNICEF in 2018, it was reported that around 21 percent of females at the age of 20-24 years old are married. However, it has been decreasing compared with the data in the last 10 years reporting that around 25 percent of young females were married. For the last few periods, around 25 million child marriages have been prevented. Nevertheless, the child marriage phenomenon still happens. Based on the report by UNICEF, around 650 million females are married before reaching the age of 18. This phenomenon frequently occurs in South Asia and Sub-Saharan Africa.³

Indonesia is also one of the countries in the world that has a responsibility and has participated in regulating marriage matters. Indonesia has a governing law concerning marriage, namely Law Number 16 of 2019 concerning the Amendment of Law Number 1 of 1974 concerning Marriage. According to Article 1 Law Number 1 of 1974 concerning Marriage, marriage constitutes a physical and a conjugal union between a man and a woman as husband and wife to establish a happy and everlasting family or household based on the “Belief in the One and Only God”. Article 7 Paragraph (1) also stipulates that “marriage shall only be permitted if a man and a woman have reached the age of 19 (nineteen) years old”.

Marriage is an important event that requires physical, mental, social, and economic preparedness since a family is established through a marriage. It is a small group as a foundation for the continuity of a country and the nation. Hence, it is important to begin the marriage in a good way. A good marriage must be a legally and religiously valid marriage; consequently, unregistered marriage (Sirri marriage) shall not be permitted.⁴

Marriage must be performed legally. However, the reality in Indonesia, marriage is frequently conducted against the applicable legal provisions. For example, unregistered marriage that is frequently adopted by Sea Tribe people due to their poor knowledge regarding the importance and essence of marriage.

Sea Tribe is a term used in this study to refer indigenous community or people who live along a coastal area.⁵ Previously, they were a nomad who moved from one island to

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another island by using a small wooden boat which also served as a place to live for them. Up to the present, the life of this Tribe remains to strongly relies on the sea; they are still traditional and have no religion or animistic.6

In this study, the researcher investigated the child marriage phenomenon that occurred among Sea Tribe people in Lipan Island, Lingga Regency of the Riau Islands Province. In Lipan Island, there are three (3) sub-communities (Rukun Tetangga/RT). The object of this study focussed on the Sub-Community 3 (RT 3) of Lipan Island which consisting of 33 Household Heads and having around 130 people. Based on the information given by Mr. Mail as the elder of Sea Tribe people and Mr. Li as the head of the Sub-Community 3 in Lipan Island, it was stated that, from a long-ago until recently, the Sea Tribe people in Lipan Island have performed child marriage, especially females. They are mostly underage and married at the age of around 13-15 years old. This has been performed hereditary due to the tradition they believe, such as the proving gratitude to the groom-to-be for his meritorious actions to the family of the bride-to-be; hence, the family of the bride-to-be gives their daughter to prove gratitude for the kindness of the groom-to-be’s family.7

The child marriage practice does not only violate Law Number 16 of 2019 concerning Marriage but it potentially causes a violation of children’s rights from several aspects, such as educational rights. This is because most of those involving the married child are reluctant continue his/her study anymore. It also inclines to violate the child’s health rights when she must give birth to a baby because her womb is not strong enough to undertake the delivery process. Children’s rights protection is specifically regulated by Law Number 35 of 2014 concerning Child Protection. Child protection in this Law purports to guarantee and protect the children and their rights to survive, grow, develop, and optimally participate based on the human dignity as well as receive protection from any violence and discrimination. Article 26 of the Law explicitly states that parents are obliged and responsible for preventing child marriage or underage marriage. Accordingly, parents shall have an obligation in preventing their children to perform child marriage.

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7The result of an interview with Mr. Mail and Mr. Li on June 30, 2021
Based on the phenomena, the researcher posits two (2) research questions for this study. **Firstly,** it questions about the implementation of Law Number 16 of 2019 concerning the Amendment to Law Number 1 of 1974 concerning Marriage in the Sea Tribe people in Lipan Island, Lingga Regency, Riau Islands Province. **Secondly,** it questions about the impacts of the child marriage in Lipan Island, Lingga Regency of the Riau Islands Province.

**METHODS**

The method used in this study was the empirical legal research. The type of data used by the researcher are primary and secondary data. The primary data were the data collected directly from the source through some informants, namely Mr. Mail and Mr. Anes as the elders of Sea Tribe people in Lipan Island, Mr. Li as the Sub-Community Head of Lipan Island, Ptr. Noach Lumampouw as the religious leader in Lipan Island, and some of the Sea Tribe people in Lipan Island. Meanwhile, the secondary data consisted of the primary legal materials, namely Law Number 16 of 2019 concerning the Amendment to Law Number 1 of 1974 on Marriage. The collected data from the study would be analyzed using a qualitative method. Hence, they were entirely analyzed and subsequently they were organized systematically to withdraw a conclusion.

**RESSULT AND DISCUSSION**

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

   Marriage is a relationship between a man and a woman tied in a marriage vow. Marriage is extremely sacred for two humans because, through this family, they will have high-quality offspring that will be helpful for the country and the nation. Hence, it is not a surprising thing if marriage is regulated and becomes a focus for all parties, from public figures, religious leaders, and the country, including Indonesia.

   Since marriage is a vital matter, it must be performed legally. Nonetheless, in reality, child marriage practice still occurs in Indonesia. Child marriage constitutes a dangerous practice; it may have negative impacts since, in a marriage, the relevant people are

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8 Marzuki, Peter Mahmud. *Legal Research* (Jakarta: Kencana, 2010), pp. 3.
demanded to be mature. If both of them are still underage, they are prone to many problems in a marriage.\textsuperscript{9}

Child marriage practice is inclined to occur in Indonesia. According to the data from the Central Bureau of Statistics (\textit{BPS}), it is shown that, from 2001 to 2009 in urban areas, around 29\% of young girls gave birth to a baby at the age of around 15 to 19 years old. In rural areas, the percentage was even higher, namely, 58\% of young girls gave birth to a baby at the age of around 15 to 19 years old due to child marriage practice. Based on the data from UNICEF, there has been a decreasing trend related to child marriage practice in Indonesia from 2008 to 2018; however, the decrease was still categorized as slow. In 2008, the prevalence of child marriage was 14.67 percent, but, in the following decade (in 2018), the prevalence only decreased by 3.5 percent to 11.21 percent. Around 1 out of 9 females at the age of 20 – 24 years old have their first marriage before reaching the age of 18 years old.\textsuperscript{10}

Child marriage practice occurring in many areas of Indonesia generally has the same reasons. Firstly, pre-marital adolescent sexual behavior (adolescent sexual behavior outside of marriage) leads to a child marriage practice. Secondly, the applicable culture in a community believes that 16 years old girls are mature enough to get married.\textsuperscript{11}

Indonesia has a regulation to govern marriage, namely Law Number 16 of 2019 concerning the Amendment to Law Number 1 of 1974 concerning Marriage. Article 2 regulates the valid requirements of a marriage, namely “(1) marriage is valid if it is done based on each religious law and belief and (2) every marriage is registered according to the applicable laws.” It is also provided by Article 6 that “(1) marriage shall be based on the agreement of both parties, (2) to conduct marriage, someone who has not reached the age of 21 (twenty one) years old shall get permission from his/her parents, (3) when one of the parents is passed away or cannot state his/her wish, the permission that is mentioned in Paragraph (2) of this Article can be obtained from a parent who is still alive or a parent who can speak up his/her wish, (4) if both parents are passed away or cannot speak up their wish, the permission can be obtained from a guardian who raises them or a family member who is in a straight line upward (blood relation) as long as they are still alive and can speak

\textsuperscript{10} Statistik (n 3).
\textsuperscript{11} Surmiati Ali, ‘Child Marriage in Indonesia Based on the Perspective of Government and Religion and the Issues’, file:///C:/Users/user/AppData/Local/Temp/405-1087-1-SM.pdf.
up their wish, (5) when there is a deviation among people mentioned in paragraph (2), (3), and (4) in this article, or someone or more people among them do not express their opinion, the court where the people will hold the marriage as their request can give a permission right after hearing the people in paragraph (2), (3), and (4) in this article. (6) the regulations, from paragraph (1) to paragraph (5) in this article, are applicable as long as the religious law and the belief of the person do not say different things.”

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

Child marriage practice frequently occurs in rural people due to their poor knowledge, for example child marriage in the Sea Tribe people in Lipan Island. Lipan Island is one of the islands in Lingga Regency of the Riau Islands Province. This province is one of the provinces in Indonesia surrounded by some small islands. Based on the developed history, it is shown that Malay people are the original tribe living in Riau Islands Province. However, if it is explored deeply, the Sea Tribe is one of the original tribes living in the Riau Islands Province. Sea Tribe people consist of a group of people with the same characters. They wander around the marine areas, frequently move from one place to another, and live on a small wooden boat.12

Based on the result of an interview with Mr. Anes, the elder of the Sea Tribe people in Lipan Island. He stated that, formerly, the Sea Tribe people in Lipan Island also lived on a small wooden boat and were nomads. In 1985, they started to build their houses in a cottage and did not live on small wooden boats anymore. In 2001, the local government helped them to build their houses along the coastal areas. Up until now, they have remained to live along such areas and no longer on the small wooden boats.13

The Sea Tribe people in Lipan Island consist of around 33 household heads (KK) and around 130 people. All of them are Christians and under the pastoral guidance of Ptr. Noch

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13 The result of an interview with Mr. Anes on June 30, 2021
Lumampouw in Pantekosta church in Indonesia.\textsuperscript{14} Previously, these people performed child marriage practices, especially for girls. Based on the result of an interview with Mr. Anes’s wife, she stated that she got married when she was only 16 years old. She also had a daughter from the marriage at the age of 16 years old.

The same notion was also revealed by Mr. Mail and Mr. Anes as the elders of the Sea Tribe people in Lipan Island and Ptr. Noch Lumampouw as the religious leader in Lipan Island that child marriage practice has been held for a long ago due to the following factors:\textsuperscript{15}

1. The cultural factor. They believe and perform a culture of proving gratitude from the bride-to-be to the groom-to-be by letting the daughter be with the groom-to-be’s family when the girl has already gotten a monthly period.

2. Matchmaking factor. Families pairs their kids with other kids when they are still really young. When the kids have already grown up, they will get married.

3. Adolescent Sexual Behaviour. A female and a male adolescent of the Sea Tribe in Lipan Island will have lived in the same house when they are in a relationship; hence, they are forced to be married at a young age due to their inappropriate behaviors.

4. Unemployment factor. Since the female Sea Tribe in Lipan Island have no job, they may become a burden for their family. As the result, it is better to arrange a marriage for the girls immediately to reduce the family’s burden.

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

\textsuperscript{14}The result of an interview with Ptr. Noch Lumampouw as the religious leader in Lipan Island on June 29, 2021
\textsuperscript{15} The result of an interview with Mr. Anes, Mr. Mail, Mr. Li, and Ptr. Noch Lumampouw from June 29-30, 2021
elementary graduates only. Lack of education also becomes one of the factors to promote a child marriage practice among the Sea Tribe people.

Based on the result of an interview with Ptr. Noch Lumampouw, he stated that, to date, child marriage practice still occurs due to the abovementioned factors. For example, in 2020, there were four (4) couples who conducted a marriage when the bride was only 17 years old and an elementary graduate. The four (4) couples have lived in the same house for a long time so that Ptr. Noch Lumampouw as the religious leader and the village head implemented a solution, namely marrying those couples based on their religion. However, they will register their marriage at the Civil registration and to obtain a Family Card registration (KK) when the couple has reached the required age as regulated by the government.\footnote{The result of an interview with Ptr. Noch Lumampouw, the religious leader in Lipan Island, on June 29, 2021.}

In measuring how far the implementation of Law Number 16 of 2019 concerning the Amendment to Law Number 1 of 1974 concerning Marriage, the researcher used the Effectiveness of Law Theory by Soerjono Soekanto. Legal effectiveness means that the law is considered effective when the people have performed the law as has been regulated and written.\footnote{Hans Kelsen, General Theory of Law and State. Translated by Somardi (Bee Media Indonesia, Jakarta, 2007), pp. 47.} Therefore, the meaning of whether a law is effective or ineffective depends on the people’s deeds, not on the law. Legal effectiveness focuses on the people’s deeds that strongly obey the legal regulations. Legal effectiveness shows a fact that people shall do things that have been regulated by the law. In this case, it is in line with a statement by Achmad Ali, stating that, to know how far the law is effectively implemented, the first thing to be done is measuring how far the people obey the law.\footnote{Achmad Ali, Revealing Legal Theory and Judicial Prudence Including Interpretation of Legislations (Legisprudence), Kencana, Jakarta, 2010, pp. 375.} Thus, compliance with the law can be the barometer of law effectiveness as stated by Soerjono Soekanto that measuring the law effectiveness is determined by the people’s compliance level with the law.\footnote{Soerjono Soekanto, Legal Effectiveness and the Role of Witnesses (Remaja Karya, Bandung, 1985), pp. 7.}

The Effectiveness of Law Theory according to Soerjono Soekanto consists of 5 (five) factors to measure the effectiveness of the law. First, the legal factor or written law; second, law enforcers, namely prosecutors, judges, police officers, and other legal professions that
play the roles in enforcing laws; third, facilities and infrastructures that support the law enforcement; fourth, the factor of a community (people), namely the place where the law is applicable or implemented; fifth, the culture is considered as works, creations, and tastes based on human initiative.\textsuperscript{20}

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

1. **Legal factor:** Indonesia has Law Number 16 of 2019 concerning Marriage. Nevertheless, the Law remains to have a loophole that may permit child marriage practice. It provides by Article 7 which stating that the parents of bride/groom-to-be can propose a dispensation to the court to conduct a marriage under an ‘urgent condition’. However, there is no detailed explanation about the category of the urgent condition.

2. **The factor of law enforcers:** the law enforcers in this regard are the religious leaders that consecrate the marriage. Based on the result of an interview with Ptr. Noch Lumampouw as the religious leader, he admitted that he did not know that there was a clause in the Marriage Law providing a loophole for a child marriage practice since the Law permits parents may propose a dispensation to the court. The same sentiment was also advanced by the public figure in the Sea Tribe, Lipan Island. Therefore, when they discover that underage couple live together in the same house, the religious leaders and the parents of both parties will arrange their marriage based on religious law and make a family certificate when the couple has reached the required age based on the laws and regulations.

3. **The factor of facilities and infrastructures:** based on the result of the interview, socialization or education had never been conducted for Sea Tribe people in Lipan Island relating to the dangers of child marriage practice. Therefore, they did not know the information about such dangers and the regulation on marriage. This circumstance was also resulted by a lack of information and difficulties in accessing such information.

4. The factor of a community (people): majority of the Sea Tribe people in Lipan Island have low education level. Consequently, they do not have sufficient knowledge of the dangers of child marriage practice. As the result, the performance of child marriage has become a tradition for them. Besides, the existence of adolescent sexual behaviour also leads to child marriage practice.

5. The factor of culture: based on the result of the interview, it was found that one of the factors causing child marriage practice was a culture of proving gratitude between the bride’s family and the groom’s family that would result in child marriage practice.

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

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

Child marriage is not only regulated by Law Number 16 of 2019 concerning Marriage. However, the prohibition to conduct a marriage is also regulated by Law Number 35 of 2014 concerning Child Protection, especially Article 26 paragraph 1 stating that “parents are obliged and responsible for: a. nurturing, raising, educating, and protecting the children; b. eliciting children based on their competence, talent, and interest; c. Preventing child marriage; and d. Providing character-building education and moral values dissemination in children”.

Indonesian children shall get responsible protection. Hence, Indonesia has a set of laws to govern and provide the protection. The laws evidence that Indonesia has serious attention to child protection. The implementation of child protection is the obligation and responsibility of the state, government, people, family, and parents enclosing the protection in the religion, education, health, and social sectors.21

Child protection from child marriage practice is vital. Children are the subject that shall be protected since they are the future generations of a nation.\textsuperscript{22}

The parties who are responsible for giving protection are the state and government, parents, and family. Child protection is a set of efforts that is performed to guarantee the security, peace, and wellbeing of children. The protection is given based on the children’s needs rationally, effectively, and efficiently.\textsuperscript{23}

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

1. It affects the babies. Most of the babies are dead. For example, Mr. Anes’s wife got married at her 16 years old. She gave birth to 10 children; however, 6 of them were dead right after being born.\textsuperscript{24} For females who get married at the age of below 20 years old, if they are pregnant, they will experience problems in their pregnancy and delivery process.\textsuperscript{25} However, based on the result of the interview, it was also found that, currently, the Sea Tribe people in Lipan Island were helped by the presence of a public health centre. Thus, when they are going to give birth, they are helped by the medical officers in the public health centre. It is different from what happened previously, if the mothers wanted to give birth, they would be helped by their family only at home and gave birth at home or sometimes the mothers went for asking help from the traditional midwife to help the delivery process.

2. It affects the family’s economy. Based on the result of the interview with Mr. Mail, he stated that a couple who perform a child marriage practice generally could not finance their family; hence, they still depend on their parents.\textsuperscript{26}

3. It affects education. Based on the result of the interview with Susan, Ipi, Dorkas as the Sea Tribe people in Lipan Island who got married at the age of 16 years old stated that when they were about to marry, they were still studying in the first grade of junior high school, but after getting married, their stopped going to school

\textsuperscript{22} Fajaruddin, ‘Legal Protection for Victims of Child Pornography’, 2014, 10(Febuari) Varia Jusitia Journal 23.


\textsuperscript{24} The interview with Mr Anes’s Wife in June 30, 2021.

\textsuperscript{25} Rina Yulianti, ‘Impacts Caused by Child Marriage’, 2010, 3(Januari) Pamator Journal 5.

\textsuperscript{26} The interview with Mr. Mail on June 30, 2021.
because they had to manage household chores. A similar situation was also stated by Mr. Anes and Mr. Mail as the elders of Sea Tribe people in Lipan Island; they stated that the current generations also conducted child marriage practices while their education background was only elementary level, and they did not continue their study because they had to do household chores.  

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

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

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27 The interview with Susan, Ipi, and Dorkas as the Laut tribe people in Lipan Island
CLOSING

1. Conclusion

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

Based on the result of this study, it is found that a child marriage practice has been occurring since a long time ago and it has become a tradition until now. The majority of females at the age of around 15-16 years old have already got married. This is because of several factors, namely cultural factors, matchmaking by parents, unemployment, education, and adolescent sexual behaviour. Explicitly, Indonesia has a law governing marriage, namely Law Number 16 of 2019 concerning Marriage. However, when the Effectiveness of Law Theory by Soerjono Soekanto is adopted as an analytical tool to measure the effectiveness of this Law, it is found that it still has many weaknesses; especially its legal factor still gives many opportunities to conduct a child marriage practice. This is provided by Article 7 of the Law which stating that underage marriage can be conducted if the groom’s/bride’s parents propose a dispensation to the court under a condition that there is an urgent condition. There is also a weakness in the community and cultural factors. The Sea Tribe people in Lipan Island are people without a good education level so that they do not understand the dangers of child marriage practice, on top of that the practice has become a cultural heritage, thus it is considered as common practice.

2. Suggestion

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

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