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Children's Rights In The Context Of Child Marriage In Gorontalo Province

Hijrah Lahaling^{1*}, Siti Alfisyahrin Lasori², Kindom Makkulawuzar³, Yudin Yunus⁴
Safrin Salam⁵

^{1,2,3,4} Faculty of Law Universitas Ichsan Gorontalo, Gorontalo, Indonesia.

⁵ Faculty of Law Universitas Muhammadiyah Buton, Baubau, Indonesia.



✉ : ijhomakassar@yahoo.co.id^{1*}, st.alfisyahrin@gmail.com², kindommakkulawuzar@gmail.com³, yudinhamzahyunus@gmail.com⁴, safrinjuju@gmail.com⁵

Corresponding Author *

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Keywords: Child Marriage, Child Rights, Legal Protection	<p>Introduction: The practice of child marriage is quite common and is rife in Gorontalo Province. From 2019 to 2021, there were 1,383 data on applicants for child marriage dispensation at the Religious Courts of the Gorontalo Province Regency/City.</p> <p>Purposes of the Research: To complement the shortcomings of previous studies that did not pay attention to legal protection against neglect of children's rights in line with the increasing age of child marriage in terms of the perspective of children's rights.</p> <p>Methods of the Research: This study uses empirical legal research using a statutory approach, a case approach, and a conceptual approach. sources of data using primary and secondary data. Data collection techniques using literature review techniques and interviews Data analysis uses qualitative data analysis, which is analyzed theoretically to obtain prescriptive legal solutions.</p> <p>Results / Findings / Novelty of the Research: The neglect of children's rights in cases of child marriage is more due to the unavailability of legal protection that guarantees the fulfillment of children's human rights and the legitimacy aspect of customs, culture, and traditions regarding social status in society</p>	

1. INTRODUCTION

Child marriage at an early age is still prevalent. According to available data, 700 children have been married, and one of the three ladies is still only 15 years old.¹ Child marriage,

¹ Dkk Siti Aisyah, *Panduan Penelitian Dan Pemantauan Perkawinan Usia Anak* (Makassar: Liblitera Institute, 2019).

below, is a real phenomenon that occurs in society.² Weak knowledge, both in terms of education and social parenting, causes child marriage to occur.³

This phenomenon often occurs in all provinces in Indonesia, one of which is Gorontalo Province. The practice of child marriage is quite high. The number of applicants for dispensation for child marriage per three years (2019–2021) is 1,383 cases in Gorontalo Province. According to UNICEF, women aged 20 and over who have been married for.⁴ This condition is very worrying because children have lost their rights and it has implications for children's lives. Among them are children experiencing bad conditions for all social and economic indicators, being bullied, being the object of discussion in their environment and in the midst of society, low education, increasing poverty rates, and domestic violence (KDRT) so that it has an impact on divorce. It is feared that this bad impact will be experienced and continue for generations to come. This is a form of violence and discrimination against children.⁵

According to the conclusions of research on child marriage, the increase in child marriage was due to court judgments and the increasing number of requests for dispensation for marriage in Religious Courts.⁶ Second, a study that examines the impact of child marriage on the high divorce rate at the Surakarta Sekarisiden Religious Court during the COVID-19 period. This study discusses the relationship between child marriage and high divorce cases and the impact of increasing the child marriage age.⁷ Third, a study that examines the problems of underage marriage and the challenges of achieving the SDGs. This study talks about how Indonesia protects kids who get married when they're too young and how the SDGs can be reached in the fifth goal.⁸

However, the three studies ignore aspects of legal protection of children's rights in cases of child marriage. This study focuses on the neglect of children's rights in line with the increase in child marriages and the absence of legal protection that guarantees the fulfillment of children's human rights.

² Farhah Kamilah and Elyse Maria Rosa, "Marriage Experience from the Girl's Perspective: A Scoping Review," *Jurnal PROMKES* 9, no. 2 (2021): 186, <https://doi.org/10.20473/jpk.v9.i2.2021.186-194>.

³ Fransiska Novita Eleanora and Andang Sari, "Pernikahan Anak Usia Dini Ditinjau Dari Perspektif Perlindungan Anak," *PROGRESIF: Jurnal Hukum* 14, no. 1 (2020): 50–63, <https://doi.org/10.33019/progresif.v14i1.1485>.

⁴ Stephanie R. Psaki et al., "What Are the Drivers of Child Marriage? A Conceptual Framework to Guide Policies and Programs," *Journal of Adolescent Health* 69, no. 6 (2021): S13–22, <https://doi.org/10.1016/j.jadohealth.2021.09.001>.

⁵ Anastasya Tesalonika Karwur, "Fenomena Perkawinan Dibawah Umur Menurut Undang-Undang Nomor 1 Tahun 1974," *Lex et Societatis* VII, no. 1 (2019): 91–98.

⁶ Riska Yunitasari, "Dinamika Pembaharuan Batas Usia Perkawinan (Analisis Batas Umur Melaksanakan Pernikahan Dalam Hukum Nasional Indonesia)," *Doktrina: Journal of Law* 3(1), no. April (2020): 9–21, <https://doi.org/10.31289/doktrina.v3i1.3253>.

⁷ Mansari & Rizkal, "Peranan Hakim Dalam Upaya Pencegahan Perkawinan Anak: Antara Kemaslahatan Kemudharatan," *El-Ussrah: Jurnal Hukum Keluarga* 4, no. 2 (2021): 328–56.

⁸ R Ratnaningsih and S Sudjatmiko, "Menakar Nilai Keadilan, Kemanfaatan, Dan Kepastian Hukum Pencegahan Perkawinan Anak," *Journal Economic & Business Law* ... 1, no. 1 (2021): 50–66, <https://jurnal.unej.ac.id/index.php/JEBLR/article/view/24212>.

2. LITERATURE REVIEW

2.1 Child Marriage

Marriage is a physical and emotional bond between a woman and a man.⁹ According to Article 1 of Law No. 1 of 1974, the objective of marriage is to create a happy household. Marriage is a process that requires physical and mental preparation. Marriage produces a child. Children are God's provision, endowed with dignity and worth in their collective position.

One of the legal principles in marriage is that both men and women must be physically and spiritually prepared. This idea emphasizes that marriage does not result in divorce and generates physically healthy offspring. This idea has not been fully implemented in the case of child marriage.¹⁰ The goal of this regulation is to safeguard children's rights in child marriage.¹¹ This law is in place to prevent minors from marrying.¹² Essentially, the marriage of minors is the cause of domestic violence.. Selfishness and relying on parental wealth are also two of the tendencies that occurred in households where someone was previously married at a young age. From the perspective of reproductive health, child marriage has many risks and dangers because, physically and mentally, the child is not ready to give birth, so disturbances in the reproductive system arise until the death of the mother and baby.

2.2 Children's Right

According to Philipus M. Hadjon, the principles contained in the concept of human rights (HAM) are claims for rights to the state and obligations that must be carried out by the state.¹³ Human rights (fundamental rights) mean rights that are fundamental (grounded). Human rights state that in the human dimension, humans have basic rights..

According to Jon Locke, human rights are the most fundamental rights because they originate with God Almighty. This privilege cannot be violated by anyone..¹⁴

Article 1 of Law Number 39 of 1999 concerning Human Rights states that:

⁹ Allika Fadia Tasya and Atik Winanti, "Dispensasi Perkawinan Anak Setelah Adanya Perma Nomor 5 Tahun 2019," *Wajah Hukum* 5, no. 1 (2021): 241, <https://doi.org/10.33087/wjh.v5i1.333>.

¹⁰ Dian Ety Mayasari and Andreas L. Atjengbharata, "Pengaturan Batas Usia Untuk Melakukan Perkawinan Ditinjau Dari Undang-Undang Perlindungan Anak," *DiH: Jurnal Ilmu Hukum* 16, no. 2 (2020): 237–46, <https://doi.org/10.30996/dih.v16i2.3425>.

¹¹ Sahuri Lasmadi, Kartika Sasi Wahyuningrum, and Hari Sutra Disemadi, "Kebijakan Perbaikan Norma Dalam Menjangkau Batasan Minimal Umur Perkawinan," *Gorontalo Law Review* 3, no. 1 (2020): 1, <https://doi.org/10.32662/golrev.v3i1.846>.

¹² Mughniatul Ilma, "Regulasi Dispensasi Dalam Penguatan Aturan Batas Usia Kawin Bagi Anak Pasca Lahirnya UU No. 16 Tahun 2019," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 2, no. 2 (2020): 133–66, <https://doi.org/10.37680/almanhaj.v2i2.478>.

¹³ Majda El Muhtaj, *Dimensi-Dimensi HAM : Mengurai Hak Ekonomi, Sosial, Dan Budaya* (Jakarta: Persada Jakarta, 2009).

¹⁴ Masyhur Effendi, *Dimensi Dan Dinamika Hak Asasi Manusia Dalam Hukum Nasional Dan Internasional* (Jakarta: Ghalia Indonesia, 1994).

"Human rights are a set of rights inherent in the nature and existence of humans as creatures of God Almighty, and are His gifts that must be respected, upheld, and protected by the state, law, government, and everyone for the sake of honor and protection. Human dignity. "

D.F. Scheltens establishes a distinction between the source of human rights and the fact that human rights are inherent rights since he is a human being., and basic rights derived from the word *grondrechten*, namely rights that are obtained by every human being as a consequence. When he becomes a citizen of a country, Marthen Kriale, is of the view that the basic principle of human rights is a right that comes from God In practice, no one has the right to human rights. Because fundamentally, human rights originate with God. The government's function is to recognize and safeguard human rights and to ensure their implementation.¹⁵

2.3 Children's Rights

Human rights are natural rights and are a direct gift from God.¹⁶ Children's human rights are protected in Article 28B (2) of the 1945 Constitution, which reads:

"Every child has the right to survival, growth, and development, and the right to protection from violence and discrimination."

The Convention on the Rights of the Child (CRC) has governed children's rights; the convention's provisions regulate children's legal rights.. Children are a gift from the Most High God. The state legally recognizes and protects its existence.¹⁷

Indonesia has ratified the CRC which was ratified in the form of Presidential Decree No. 36/1999 while the legal principles in child protection are: ¹⁸ :

- 1) The principle of non-discrimination means that the principles contained in the convention must be applied to every child without any differences
- 2) The principle of the best interests of children
- 3) The existence of the right to life, and the principle of development
- 4) The principle of respect for children's rights

¹⁵ Tim ICCE, *Demokrasi, Hak Asasi Manusia Dan Masyarakat Madani* (Jakarta: Prenada Media Group, 2003).

¹⁶ I Gede Arya B. Wiranata, *Hak Asasi (Anak) Dalam Realitas Quo Vadis ? Hak Asasi Manusia : Hakekat Konsep Dan Implikasinya Dalam Perspektif Hukum Dan Masyarakat* (Bandung: PT Refika Aditama, 2009).

¹⁷ YLBHI, *Panduan Bantuan Hukum; Pedoman Anda Memahami Dan Menyelesaikan Masalah Hukum* (Jakarta: YLBHI, 2007).

¹⁸ Rika Saraswatti, *Anak Perlindungan Hukum Di Indonesia* (Bandung: PT Citrana Aditya Bakti, 2009).

As a result, it is possible to argue that children have human rights.¹⁹ . Smith stated unequivocally that globally regulated human rights are children's rights. However, in fact, children's rights continue to be violated, one of which is underage marriage.²⁰

3. METHOD

Empirical legal research is the type of research used in legal research. The research location is Gorontalo Province. While the data sources used are primary data and secondary data, Data collection techniques using primary data collection and secondary data. Data analysis uses qualitative data to obtain prescriptive norms.

4. RESULTS AND DISCUSSION

4.1 Forms of Ignoring Children's Rights in Child Marriage Cases

Minors marrying minors has not been regulated or outlawed legally because it is a type of marriage of neglect of children's rights in cases of child marriage. In particular, the law in Indonesia does not yet regulate the marriage of minors.²¹ However, in practice, marriages still occur due to the practice of matchmaking between families.²² This is rooted in the customs and culture that are rooted in the community.²³

According to the research findings, child marriages are increasing. From May 2019 through 2021, data on applications for marriage dispensation at the Regency/City Religious Courts reveals the following; it can be seen in the table below :

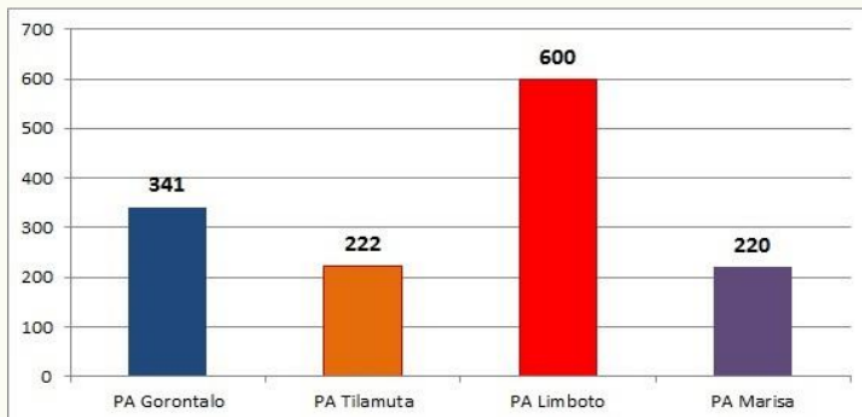
¹⁹ Muhtaj, *Dimensi-Dimensi HAM : Mengurai Hak Ekonomi, Sosial, Dan Budaya*.

²⁰ Yuli Adha Hamzah, Arianty Anggraeny Mangarengi, and Andika Prawira Buana, "Analisis Yuridis Perkawinan Dibawah Umur Melalui Kewenangan Kantor Urusan Agama (Studi Kasus Di KUA Kabupaten Bantaeng)," *Pleno Jure* 9, no. 2 (2020): 119-28, <https://doi.org/10.37541/plenojure.v9i2.431>.

²¹ Supri Yadin Hasibuan, "Pembaharuan Hukum Perkawinan Tentang Batas Minimal Usia Pernikahan Dan Konsekuensinya," *Teraju* 1, no. 02 (2019): 79-87, <https://doi.org/10.35961/teraju.v1i02.88>.

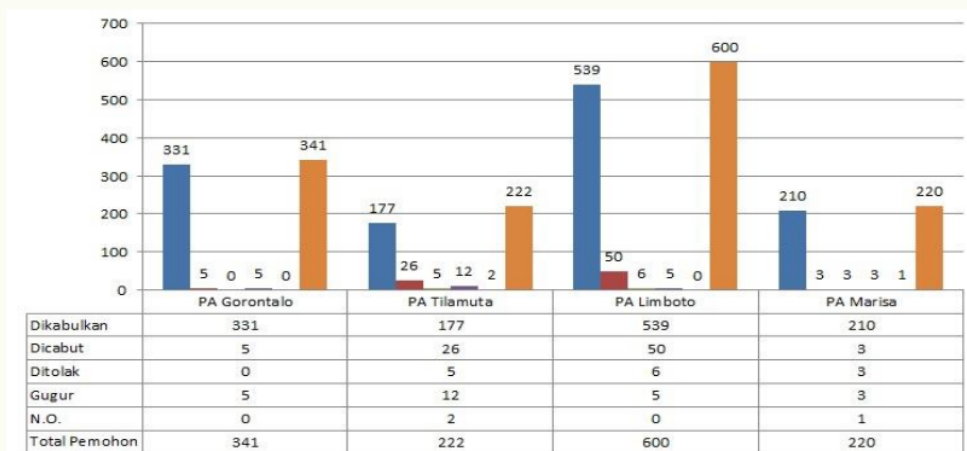
²² Christina Misunas et al., "What Influences Girls' Age at Marriage in Burkina Faso and Tanzania? Exploring the Contribution of Individual, Household, and Community Level Factors," *Journal of Adolescent Health* 69, no. 6 (2021): S46-56, <https://doi.org/10.1016/j.jadohealth.2021.09.015>.

²³ Manahil Siddiqi and Margaret E. Greene, "Mapping the Field of Child Marriage: Evidence, Gaps, and Future Directions From a Large-Scale Systematic Scoping Review, 2000-2019," *Journal of Adolescent Health* 70, no. 3 (2022): S8-16, <https://doi.org/10.1016/j.jadohealth.2021.09.020>.



Source: Primary data, 2021

From the data on the applicant for the marriage dispensation, it can be mapped out the applicant's data, whether accepted (accepted), rejected, revoked, rejected, or N.O (not accepted), as illustrated in the table below :



Source: Primary data, 2021

The table above shows that the overall data on applicants for child marriage dispensation in Gorontalo Province is quite high, with per three years 2019–2021, as many as 1,383 cases. The total number of cases granted was 1,257, of which 84 were withdrawn, 14 were rejected, 25 were lost, and N.O. 3 cases. This data shows that the bride and groom use the marriage dispensation mechanism to get married.²⁴

4.2 Factors Causing Ignorance of Children's Rights in Child Marriage Cases

²⁴ S Salam, "Dispensasi Perkawinan Anak Di Bawah Umur : Perspektif Hukum Adat , Hukum Negara & Hukum Islam" *Pagaruyuang Law Journal* 1, no. 1 (n.d.): 110–124.

According to the interview data above, the root of the child marriage problem is influenced by a variety of sectors, one of which is the existence of customs embedded in people's knowledge that push parents to encourage children to marry at a young age.

"...Since the amendment to the Marriage Law No. 1 of 1974 into Law No. 16 of 2019, where men and women are allowed to marry if they have reached the age of 19 years and over, the data on child marriage has actually increased. The initial intention was to reduce the number of child marriages, but what has happened has actually increased in cases throughout Indonesia. In Pohuwato Regency, especially in Marisa, it is normal for someone to get married at the ages of 17 and 18. After graduating from high school, the average person gets married immediately, and it is a tradition for the people here. (Interview with Mr. HTW, May 3, 2021)".

In addition, other factors that cause child marriage in Gorontalo Province are low education, poverty (economy), risky promiscuity, pregnancy out of wedlock, and a lack of understanding of reproductive health.

The various perceptions of the people of Gorontalo towards the practice of child marriage are quite diverse. There are those who give both positive and negative responses depending on the factors that cause child marriage. The public perception can be seen in the table below :

Statement	Positive Feedback	Negative Feedback
Perceptions or views of the Gorontalo community regarding the practice of child marriage in their area.	<ol style="list-style-type: none"> 1. It must be prevented, sorry for the future of the children and their descendants later. 2. has a negative impact on children 3. Children's education is low and has an impact on access to work later. 4. Increased divorce rates as a result of domestic violence cases 5. Increase the rate of poverty 6. Increase the rate of child labor. 7. Increase the number of maternal and infant deaths. 	<ol style="list-style-type: none"> 1. No problem, depending on the cause. 2. It's a common occurrence and a mediocre event. 3. It doesn't matter and doesn't have to be debated. 4. The important thing is that parents' support 5. Instead of embarrassing the family because they are already pregnant, 6. The important thing is that they like each other. 7. The myth that if you refuse an application, life will be difficult and later it won't sell well.

Source: Primary data, 2021

The data in the table shows that child marriage in Gorontalo Province is a common and ordinary event, not a problem that must be debated. This shows that socio-culturally, it is a factor in the occurrence of child marriage.²⁵ No longer thinking about how to fulfill children's rights as regulated in several existing regulations. Even the view of society in general states that:

"...Child marriage has increased quite a bit during this pandemic, because children have lost their enthusiasm for school, so they prefer to get married, and their parents are also supportive. Their parents say: 'is this school never entered, so if someone applies for my child, they are accepted, because here's the myth that if someone comes to apply and is rejected, their life in the future will be difficult because they have refused sustenance, and in the end, they won't even sell (interview with El's mother, May 3, 2021)".

"...Because the reason is that the children are already pregnant, what else can you do? It is better to get married than to embarrass the family because this is a disgrace. In addition, since the association is very free, the children are difficult to control; they have boyfriends and often go out together, because they like each other, and to avoid unwanted things, it is better to just get married. (Interview with Mr. SP, May 3, 2021)".

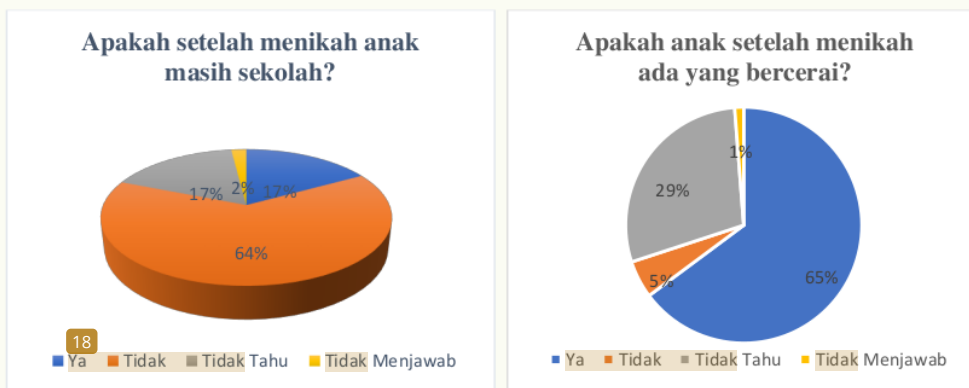
4.3 Implications of Ignoring Children's Rights in Child Marriage Cases

The severity of the neglect of children's rights that are not protected has implications for children's lives. For example, experiencing bad conditions on all social and economic indicators, being bullied, becoming the object of discussion in their environment and in the midst of society.

Other impacts caused by child marriage are dropping out of school, getting pregnant at a child age and giving birth at an immature age, increasing the risk of domestic violence (KDRT), conflicts that lead to divorce and lead to structural impoverishment of women. It is feared that this bad impact will be experienced and continue for generations to come.

Based on the questionnaire distributed to 100 respondents, 64% answered that their children no longer continued their education after marriage, 17% answered that they were still continuing their education, 17% said they did not know and 2% did not answer. Likewise, with responses related to divorce that occurred after marriage, 65% answered yes, there was a divorce after the child was married, 5% answered that there was no divorce, 29% did not know, and 1% did not answer. These facts can be seen in the diagram below :

²⁵ Fitriyani Bahriyah, Sri Handayani, and Andari Astuti Wuri, "Pengalaman Pernikahan Dini Di Negara Berkembang: Scoping Review," *Journal Of Midwifery and Reproduction* 4, no. 2 (2021): 94–105, <https://journal.umbjm.ac.id/index.php/midwiferyand reproduction/article/view/709>.



Source: Primary data, 2021

The implications that occur in the lives of children due to child marriage, as depicted in the diagram above, will hinder the Human Development Index (HDI) and also the achievement of the SDGs. For this reason, the practice of child marriage must be stopped immediately. This condition is very worrying. According to the research findings, children's rights have been violated during minors' marriages. The law that is supposed to protect children has not adequately protected children's rights.

Children's rights have been violated in numerous ways, including the right to life, the right to grow and develop, the right to participate in all activities, and the right to be free from all sorts of violence and discrimination. The neglect of children's human rights is caused by community traditions that consider child marriage a natural and legal event, so many parents still choose to match and force their children to marry because of the high sense of worry and excessive fear they feel in children, especially in children. girl.

The neglect of children's rights is also caused by economic factors (poverty), so most parents find ways to release their caregiving responsibilities to others so they can find a companion (husband) for their children. This is also backed up by the fact that parents aren't well-educated, their home isn't harmonious, and they're not good parents to their kids. The neglect of children's rights also occurs because of the legitimacy of cultural and customary understandings of social status in society if they refuse marriage proposals, resulting in stereotypes or stigmas such as: "becoming a woman who does not sell well", "the future will be difficult", "social strata," and the successors of the lineage who participate in perpetuating the practice of child marriage as a natural thing.

This view even breaks the legal regulations regarding the term of marriage as regulated in Marriage Law No. 16 of 2019. Moreover, it is supported by Article 7 paragraph 2 of the Marriage Law, which provides concessions for child-age marriages. If there is a deviation from the age limit setting, you can apply for a dispensation from the court or other appointed official. In addition, there is a lack of socialization regarding the impact of child marriage, as well as an absence of strict sanctions given to parties involved in child marriage.

The neglect of children's human rights in child marriage, which is marked by the neglect of legal protection aspects, confirms that the state has not been serious about protecting,

fulfilling, and respecting the ¹human rights of its citizens, including the rights of children. Whereas the state, through the 1945 Constitution of the Republic of Indonesia and its derived legislation, is obligated to recognize and safeguard children's fundamental rights.. On the other hand, according to international law, the practice of child marriage is dangerous and prohibited.²⁶

Minors marrying minors violates international law, namely the CRC (Convention on the Rights of the Child), which was ratified ⁸by Presidential Decree No. 36/1990 on Ratification of the Convention on the Rights of the Child, CEDAW (Convention on the Elimination of All Forms Discrimination). The existence of international legal instruments establishes the legal basis for the international community's prohibition of underage marriage. That violates human rights is a form of psychological and physical violence against children.²⁷ From the findings above, it shows that child marriage is very detrimental to children who are not mentally and emotionally ready for it.²⁸

Based on the implications caused by child marriage on the lives ²³of children that have been described in the results above, it is necessary to make efforts to prevent and eliminate the occurrence of child marriage, namely in the form of commitment, synergy, and responsibilities of parents, regional government, village government, religious courts, KUA, DPPPA, education and culture office, BKKBN, health service, NGO/NGO, community groups, universities, religious leaders, traditional leaders, community leaders, media, and ²⁰participation of the entire community, both individuals and groups. In addition, as a joint effort to reduce the number of child marriages ²⁷, it is important to educate the public and develop capacity about the impact and prevention ⁴of child marriage through socialization and legal counseling, as well as encourage regional policies related to the prevention of child marriage. In order for the realization of one district or at least a village that becomes a child-friendly pilot project, which will be duplicated into a pilot village for other villages, especially in Gorontalo Province.

5. CONCLUSION

This study finds that the neglect of children's rights in cases of child marriage is caused more ²¹by the unavailability of legal protection that guarantees the fulfillment of children's human rights and the legitimacy aspect of understanding customs, culture, and traditions regarding social status in society. The analysis of the neglect of children's human rights in cases of child marriage has made it possible to find two important things. First, the neglect of children's rights is a dynamic which requires special attention from the government. The neglect that occurs shows not only the paradigm of people's thinking ¹that is biased towards the social status of a child marriage, but also that legal protection will ensure the fulfillment of children's human rights in ¹cases of child marriage. Second, this research also provides a new perspective in looking at the rights of children who are neglected in the practice of child marriage from the perspective of child rights, which so far have only been seen from the

²⁶ Ewa Batyra and Luca Maria Pesando, "Trends in Child Marriage ¹³and New Evidence on the Selective Impact of Changes in Age-at-Marriage Laws on Early Marriage," *SSM - Population Health* 14 (2021): 100811, <https://doi.org/10.1016/j.ssmph.2021.100811>.

²⁷ Traditional Marriage, "The Law Protection for the Woman Victim of Violence on Traditional Marriage," *SASI* 28, no. 158 (2022): 68–77.

²⁸ Rudolf S. Mamengko Brigita D.S. Simanjorang, Suriyono Suwikromo, "Kajian Hukum Perkawinan Anak Dibawah Umur Menurut Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Lex Privatum* 7, no. iv (2022): 1–6.

perspective of the impact and correlation of increasing divorce, not from the aspect of legal protection. The dynamic meaning has allowed the discovery of new directions for research into child marriage. This research is limited to analysis in one province in Indonesia, using a qualitative approach and the views of several informants or respondents. This analysis does not allow the research results to be used as a reference to explain the neglect of children's human rights in cases of child marriage on a large scale. Likewise, the informants' views on the factors and implications of the practice of child marriage do not provide a comprehensive picture of the neglect of children's rights in cases of child marriage. Based on these limitations, it is necessary to carry out further research by paying attention to the comparative aspect in a wider area and sourcing more varied data. In this way, more appropriate policies or regulations can be formulated.

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