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Prevention of Child Marriage Age in the Perspective of Human Rights

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Abstract : One of the rights guaranteed by the 1945 Constitution of the Republic of Indonesia is the right to marry and have children. Marriage is the beginning of the process of embodiment of the formation of a family in human life. Therefore, marriage is not merely the fulfillment of biological needs, but more than that. Marriage is a part of Human Rights stipulated in Article 10 of the Human Rights Law that everyone shall have the right to start a family and to continue the offspring through legitimate marriage and it may only take place at the free will of the prospective husband and future wife. Marriage is the inner bond between a man and a woman as a husband and wife with the aim of forming a happy and eternal family (household) based on the One Supreme God (Article 1 of the Marriage Law). Based on the article, it can be seen that the purpose of marriage is to establish a happiness and an eternal household based on the One God. Marriage is permissible for those who have met the age limit for marriage as set forth in Article 7(1) of the Marriage Law, for man nineteeen years old and for woman sixteen years old, but in fact under age marriages still happen. According to human rights perspective, under age marriage is the action of grabbing children freedom, namely the right to grow and develop optimally. Prevention of under age marriage, should be done so the children still get their basic rights.

Keywords: Islamic law; Legal system; Religious courts; Supreme court.

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INTRODUCTION

Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter the 1945 Constitution) states emphatically that "the State of Indonesia is a state of law". The sentence gives a broad sense that Indonesia is a state which does not comply with the state of power (*machstaat*) but the state of law or rule of law (*rechtsstaat*). In principle, the law is made to provide services to citizens with the aim of creating a proper order, security, welfare and sense of justice.

As a state of law, the state provides a guarantee of equal standing in the eyes of the law for all of Indonesian citizens. This is further reinforced in Article 27 Paragraph (1) of the 1945 Constitution which states that: "All citizens shall be equal before the law and

government and shall uphold such law and government with no exception."

One of the rights guaranteed by the 1945 Constitution is the right to marry and have children. Marriage is the beginning of the process of embodiment of the formation of a family in human life. Therefore, marriage is not merely the fulfillment of biological needs, but more than that.

Marriage is a part of Human Rights (hereinafter written HAM). Article 10 of Law Number 39 Year 1999 on Human Rights (hereinafter written Human Rights Law), states that: (1) everyone has the right to start a family and to continue the offspring through legitimate marriage. (2) legal marriage may only take place at the free will of the prospective husband and the future wife, in accordance with the provisions of legislation.

Article 1 of Law Number 1 Year 1974 on Marriage (hereinafter written the Marriage Law), provides a definition of marriage, namely: "Marriage is the inner bond between a man and a woman as husband and wife in aims to form a happy and eternal family (household) based on the One Supreme God."

From the article, it can be seen that the purpose of marriage is to establish a happy and eternal household based on the One Supreme God.

According to Moch. Isnaeni, based on the definition of Article 1 of the Marriage Law only, it is clear how thick religious nuances color the marriage law made by the government. The choice, among others, is based on a fact that the Indonesian nation with the foundation of Pancasila, really should be the foundation when making the rule of law, including the time to assemble the Marriage Law. The first precepts, namely Believe in the One Supreme God, are deliberately buried to prove that this nation always initiates its life with the precepts. This is the character of a nation that should be made an attribute that must be raised in all areas of life of the state. The nobility of the living joints of the Indonesian nation who believe in the one supreme god, it must be the main axis in all lines of life, not exception when making the Marriage Law.[1]

Marriage Law aims to regulate the perfect, happy and eternal human life in a household, in order to create a sense of affection and love each other. But the fact is, the history of the life of mankind that has been thousands of years old has proved that it is not always that it can be achieved, otherwise it fails or fails completely in the middle of the road, because no agreement is reached or because of it either party or the behavior of both parties contrary to religious teachings.[22]

Marriage may be permissible for those who have met the age limit for marriage as provided for in Article 7 paragraph (1) of the Marriage Law that the age limit for marriage for men is 19 (nineteen) years old and women have reached 16 (sixteen) years old. Then in the sense of legislation in the event of marriage at the age of less than that determined for both the bride and groom including the unlawful acts because the marriages held by both couples are still under age.

[1]Moch. Isnaeni, *Hukum Perkawinan Indonesia*, (Surabaya: PT. Revka Petra Media, 2015), pp.72-73.

[2]Martiman Prodjohamidjojo, *Hukum Perkawinan Indonesia*, (Jakarta: Indonesia Legal Center Publishing, 2002), p1.

In principle, underage marriage is a marriage committed or occurs to a person at the age of the children. Article1 paragraph (2) of Law No. 23 of 2002 on Child Protection, as amended by Law No. 35 of 2014 on Child Protection for Child Protection (hereinafter the Child Protection Act) states that underage marriage is the act of taking away the freedom of childhood, Children or adolescents to obtain their rights, namely the right to live, grow, develop and participate optimally in accordance with the dignity and dignity of humanity and get protection, violence and discrimination. While viewed from the Human Rights Law, the occurrence of underage marriages is a violation of the right to children including the right to education, the right to think and expression, the right to express opinions and to hear opinions, the right to rest and use leisure time with friends of the same age, play, expression and creativity and the right to get protection.

In the context of children's rights is very clearly stated in Article 26 paragraph (1) point c of the Child Protection Act, states that parents are obliged and responsible to prevent the occurrence of marriage at the age of children in the perspective of the right of the child the inclusion of such sentence is a must, which Should be a common concern. This is because children who are forced to marry in age that is still classified as a child age are seen from the aspect of children's rights, they will be deprived of their rights.

The Marriage Law does not require the implementation of underage marriage, that the minimum age restriction for marriage for the citizen is in principle intended that the person to be married is expected to have the maturity of thinking, mental maturity and sufficient physical strength, so the possibility of household rifts ending in divorce can be avoided, because the couple already has a more mature awareness and understanding of the purpose of marriage that emphasizes the aspect of happiness of the born and the soul. However, at the level of implementation in the field, the provisions are still experiencing many obstacles and problems. It is proven still the number of marriage cases of minors.

METHODS

Research about Prevention of Childhood Marriage in Perspective of Human Rights is done by using descriptive-analytical method which describes and elaborates on the existing situation or facts about protection of children's rights and interests including prevention of marriage at child age. Data and informations obtained are described in a structured and systematic way. While the approach method used is the normative juridical method of research that examines the principles of law, especially the rules of law in legislation related to child issues including marriage at the age of the child.

The research method used is normative juridical or normative legal research also called doctrinal research. In this type of legal research, the law is conceptualized as what is written in law (law in books) or law is conceptualized as a rule or norm which is a benchmark of human behavior that is considered appropriate.

As a source of data only secondary data, which consist of: (a) Primary legal material, that is binding legal materials which are legislation related to children. As regards legislation relating

to marriage at the child age in perspective of human rights; (B) Secondary law material namely materials which provide an explanation of primary legal materials, such as draft laws, research results, or opinion of legal experts, papers, scientific journals, and research results; (C) Tertiary law material, which provides guidance as well as explanation of primary legal materials and secondary legal materials, such as dictionaries (legal), encyclopedia, dictionary articles in newspapers / newspapers and magazines.

Materials related to current conditions and facts that occur will be analyzed contextually. This technique of analysis is primarily used to analyze sociological facts underlying the importance of the existence of child protection through the prevention of marriage at the age of the child, in addition to content analysis techniques carried out on legal materials (text and legislation and explanation) owned to know the purpose, The legal context, the interpretation and linkage of prevention of marriage at the age of the child as the implementation of the protection of human rights to the child.

ANALYSIS AND DISCUSSION

The Legal Aspects of Mar-Riage in General

Marriage is derived from the word "mating" which according to the Indonesian language means forming a family with the opposite sex, having sex or sexual intercourse. Derived from the word *an-nikah* which according to language means collecting, inserting, and wathi or intercourse.[3] Meanwhile, according to Sayid Sabiq, marriage is "one sunnatullah that applies to all creatures of God, both human, animal and plant".[4]

Marriage is a necessity of life for all mankind, from ancient times until now. Because marriage is an actual issue to talk about inside and outside the law. From marriage will arise the legal relationship between husband and wife and then with the birth of children, causing a legal relationship between parents and their children. From marriage they have wealth/property, and create a legal relationship between them with the wealth/property.

Marriage is a very important thing for every human life. The marriage bond raises a family law relationship that will relate to parents, children, inheritage trust, abilities and so on. It is therefore given a provision that regulates marriage or can be referred to as marriage law because marriage law is a very important part for family law. The Code of Civil Law (hereinafter written Civil Code) regulates the marriage in Book I, since Book I contains about family law which is a series of legal rules that arise to regulate the interlocutor of family life. But after the enactment of Law Number 1 Year 1974 on Marriage, most of the provisions governing marriage in Book I of the Civil Code are now void.

With the issuance of Government Regulation no. 9 of 1975 dated April 1, 1975, the Law number 1 Year 1974 about Marriage effective since 1

[3]Abdul Rahman Ghozali, *Fiqh Munakahat*, (Jakarta: Prenada Media Group, 2003), p8.

[4]Note 3, p10.

October 1975. This law is national, unification, because before the birth of this law there are various kinds of marriage regulation ever applied in Indonesia.

Furthermore, this Marriage Law accommodates the principles and provides the legal basis for marriage which has been a handbook and has been applied to various groups of Indonesian citizens. The Marriage Law has regulated in it the elements and provisions of religion and belief. The Marriage Law also contains the basic or principles of marriage and everything related to marriage that has been adapted to the development and demands of the times.

Article 1 of the Law on Marriage Law provides the definition of Marriage as follows: "Marriage is the inner bond between a man and a woman as husband and wife in order to form a happy and eternal family (household) based on the Believe in the One Supreme God".

This definition is given by lawmakers who are expected to recognize the understanding of marriage so that people understand what the core meaning of a marriage is.[5] In the explanation of the Marriage Law mentions that as a state based on Pancasila, where the first precepts are believe in the One Supreme God, then marriage has a very close relationship with religion/spirituality, so that marriage not only has the element of birth/body, but the element of spirit/spiritual also has an important role. Establish a happy family meeting with heredity, which is also the purpose of marriage, nurture and education into the rights and obligations of parents.[6]

In general, according to the religious law, marriage is a sacred act (sacrament, samskara), which is a commitment between two parties in fulfilling the command and the advice of God Almighty, so that family life and marriage and related neighbors run well in accordance with their respective religious teachings. Thus, a religiously observed marriage is a physical and spiritual engagement that brings legal consequences to the religion of the two brides and their relatives. Religious law has established the position of man by his faith and taqwa, what should be done and what should not be done (forbidden). Therefore, virtually every religion cannot justify a marriage of different religion.[7]

Article 2 Compilation of Islamic Law stipulates that "Marriage according to Islamic law is marriage, which is a very strong contract (akad) or *mitssaqan ghalidzan* to obey Allah command and perform it is worship."[8] Thus, according to Islamic law, marriage is a "contract" (engagement) between a woman's guardian with a man's future husband. The marriage contract must be pronounced by the guardian of the woman with a clear

[5]Moch. Isnaeni, Note 1, p70.

[6]Sudarsono, National Marriage Law, (Jakarta: Rineka Cipta, 2005), p9.

[7]Hilman Hadikusuma, Marriage Law in Indonesia, According to the Laws of Customary Law, (Bandung: Mandar Maju, 2007), p10.

[8]Compilation of Islamic Law is Presidential Instruction No. 1 of 1991, dated June 10, 1991.

form of consent (submitted) and accepted (kabul) by the prospective husband who performed in front of two witnesses who qualify.Otherwise the marriage is illegal, as it contradicts the hadith of Prophet Muhammad SAW narrated by Ahmad stating "Unlawful except with the guardian and two fair witnesses".[9]

According to customary law in general in Indonesia, marriage is not only meant as a "civil engagement", but also an "tradition/custom engagement" and is also a "kinship and neighborhood". Thus the occurrence of a marriage bond is not merely a result of civil relationships such as rights and obligations of husbands, common property, the position of children, the rights and obligations of parents, but also concerning the relations of customs inheritance, kinship, kinship and neighborhood and Concerning customary and religious ceremonies. It also concerns the obligation to obey the commands and religious prohibitions, both in human relationships with their Lord (worship) and human relationships (mu'amalah) in the association of life in order to survive in the world and be safe in the afterlife.[10]

In accordance with the foundation of the philosophy of Pancasila and the 1945 Constitution, the Marriage Law on the one hand must be able to realize the principles contained in Pancasila and the 1945 Constitution. On the other hand must also be able to accommodate all the facts that live in society. The Marriage Law has accommodated the elements and provisions of religious law and beliefs of those concerned.

In the Marriage Law determined principles or basic of marriage and everything related to marriage that has been adapted to the development and demands of the times.

In the explanation of the Marriage Law, it is stated explicitly about the principles or basic concerning the marriage of all things related to marriage which have been adapted to the development and demands of the times, as follows:

1. The purpose of marriage is to establish a happy and eternal family. For that husband and wife need to help each other and equip, so that each can develop personality to help and achieve spiritual and material welfare.
2. It is hereby declared that a marriage is lawful, if done according to the law of their respective religion and belief, and in addition each marriage shall be recorded according to the prevailing laws and regulations.
3. Monogamy principle. This principle is an exception, if desired by the person concerned, because law and religion permit, a husband can have more than one wife. However, the marriage of a husband with more than one wife, even if it is desired by the parties concerned, can only be done if it is met with certain conditions and is decided by the court.
4. The principle of a husband and wife must have ripened the soul and body to be able to marry, in

[9]Hilman Hadikusuma, Note 7, p11.
[10]Note 7, p8.

order to realize the goal of marriage well without ending in divorce and get healthy offspring.

5. Since the purpose of marriage is to establish a happy, eternal and prosperous family, then this law embraces the principle of exchanging divorce.
6. The rights and position of husband and wife are equal to the rights and position of the husband both in the life of the household and in the community, so that everything in the family can be negotiated and decided by the husband and wife.[11]

The validity of a marriage is a very principal thing, because it deals with the consequences of marriage, whether it concerns the child (offspring) or related to the property.[12] Article 2 of the Marriage Law states that "Each marriage is recorded according to the prevailing laws and regulations."

In the Elucidation of Article 2 of the Marriage Law it is mentioned that with the formulation in Article 2 paragraph (1), there is no marriage outside the law of each religion and its belief, in accordance with the 1945 Constitution.

While the meaning of the law of each religion and belief it includes the provisions of laws and regulations applicable to his religious class and his beliefs as long as not contradictory or other unspecified in this Act.

Article 2 of the Marriage Law sets out two lines of law which must be obeyed in the conduct of a marriage. Paragraph (1) explicitly and clearly establishes the validity of a marriage, is that the only condition for the validity of a marriage is when the marriage is done according to the religious convictions of those who will carry on the marriage.[13]Paragraph (2) regulates the issue of marriage registration, that a marriage must be recorded in accordance with applicable laws and regulations. Article 2 paragraph (2) of the Marriage Law emphasizes on the existence of marriage registration. Regarding marriage registration is regulated in Article 2-9 of Government Regulation Number 9 Year 1975 concerning Implementation of Law Number 1 Year 1974 about Marriage.

Article 2 of Government Regulation Number 9 Year 1975 concerning the Implementation of Law Number 1 Year 1974 regarding Marriage states that:

> "(1) The registration of marriages of those who are married according to Islam is performed by the Registrar Officer as referred to in Law Number 32 Year 1954 concerning the Record of Marriage, Divorce and Reconciliation; (2) The registration of marriages of those who have married according to their religion and belief other than Islam is done by the Registrar of the Registrer of Marriage as referred to in various laws concerning the registration of marriage; (3) With no reducing any provisions applicable to the procedure of marriage registration under applicable laws, the procedure for registration of marriages shall be carried

[11] Martiman Prodjohamidjojo, Note 2, pp2-3.
[12] M. Anshary MK, Marriage Law in Indonesia Crucial Issues, (Yogyakarta: Pustaka Pelajar,2015), p12.
[13]Note12, p13.

out as provided for in Articles 3 to 9 of this Government Regulation."

To be able to legally marry, must be fulfilled the terms of marriage affirmed in Article 6 of the Marriage Law, namely:

"(1) The marriage shall be based on the consent of the two prospective brides; (2) In order to marry a person who has not reached the age of 21 (twenty one)years must obtain permission from both parents; (3) In the event that either of the two parents has passed away or is unable to state his or her intention, the permit referred to in paragraph (2) of this article is sufficient to be obtained from a living parent or from a parent who has the will; (4) In cases where a parent has died or is unable to express his or her intent, the consent shall be obtained from a guardian, a nurturing person or family of blood relatives in straight line upward while they are alive and in a state of declaring their will; (5) In the event of any disagreement between persons mentioned in paragraphs (2), (3) and (4) of this article, or one or more of them not expressing their opinion, the Court within the jurisdiction of the person Shall engage in marriage upon the request of the person may grant permission after first hearing the persons referred to in paragraphs (2), (3) and (4) of this article; (6) The provisions referred to in paragraphs (2), (3), and (4) of this article apply as long as the foreign law of each religion does not specify otherwise."

Furthermore, Article 7 of the Marriage Law affirms the following matters:

"(1) Marriage is only permitted if the man has reached the age of 19 (nineteen) years old and the woman has reached the age of 16 (sixteen) years old; (2) In the case of irregularities of paragraph (10 of this article in the request of dispensation to the Court or other officials appointed by both the male and the female parent; (3) The provisions concerning the circumstances of one or both parents in Article 6 paragraph (3) and (4) of this law shall also apply in the case of the dispensation request referred to in paragraph (2) of this article with does not reduce meaning to Article 6 paragraph (2)."

Prevention of Child Marriage in the Perspective of Human Rights.

Etymologically, Human Rights (HAM) is formed from 3 (three) syllables, namely the word rights, basic words, and human words. The word rights and basic words are derived from Arabic, while the word humans comes from the Indonesian language. The word hak / *haqq* is the singular form of the word *huquq*. The word *haq* is taken from the root of *haqqa, yahiqqu, haqqaan*, which means true, real, sure, fixed and obligatory. If it says *yahiqqu 'alaika an taf ala kadza*. Based on the word, haqq interpreted the authority or obligation to do something.[14]

As for the word asasi comes from the root of the word *assa, yaussu, asa-saan*, meaning to build, establish, and lay. The word principle is the singular form of the *usus* word which means origin, essential, principle, base, basis of all things.[15]Thus the basic word is

[14]Milton, *A Dictionary of Modern Written Arabic*, Wiebaden, Oto Harrassowitz, 1979, p191-192 in Majda El Muhtaj, *Human Rights Dimensions Describe Economic, Social and Cultural* (Jakarta: Raja Grafindo Persada, 2008), p17.
[15]Note 14.

adopted into Indonesian which means basic or principal.[16]

Human rights are often called natural rights. In Dutch known as *grand rechten, mensen rechten, rechten van deen mens*, is an acknowledgment of human rights, rights in the community, and associated with human rights obligations. The term natural rights then developed into a human rights, which means *equality before the law*.

Reviewed from the various terms found in the literature, human rights are translations of "*droits de l'homme*" in French which means human rights, or in English "*Human Rights*" and in Dutch called "*messenrechten*". In another literature the term "*fundamental rights*" is used as a translation of "basic rights" in English and "*gronderechten*" in Dutch. Some call it fundamental rights as translations of "*fundamental rights*" in English and "*fundamentele rechten*" in Dutch.[17]

According to Philipus M. Hardjon[18] there is a literature in English that uses the term "*Natural Right*and in Dutch the term "*Rechten van den mens*" is in the Indonesian language literature which contain terms such as human rights, And basic rights. On the other hand the legal literature in addition to using the term rights as a translation of the terms *"grondrachten", "grunrechte*", "*fundamental rights*", from the terms *"grondrachten", "grundrechte", "fundamental rights". "Droit fundamentaux*", also used the term human rights as a translation of "*mensenrechten", "menchenrechte*", "human rights", and *"droit de l'homme."*

From the above terms, it is necessary to distinguish the understanding between fundamental rights and basic rights.The main difference between the two terms is that; Human rights refers to internationally recognized rights while fundamental rights are recognized through national law. The connotation of human rights is closely linked to ideological and political principles, while fundamental rights are part of the basic law. Furthermore, human rights are contained in political documents, making them more dynamic than the basic rights set out in juridical documents such as the Constitution and in the International Convention. Thus referring to the foregoing, the notion of human rights should also be understood as a basic right. This is not because the terms basic rights and human rights are popular and commonly used in the community, in principle have the same understanding. In addition, the limitation on this matter is also done in juridical and moral, meaning that human rights besides regulated through legal norms are also formulated in political statements. Although in the literature there is a different understanding between the basic rights (*grondrechten*) and human rights (*mensensrechten*), but not this distinction which is the

[16]Anton M. Moeliono, Indonesian General Dictionary, (Jakarta: Balai Pustaka, 1994), p60 in Henny Nuraeny, Criminal Act of Insider Trading Human Rights Perspective, (Jakarta: PT Raja Grafindo Persada, 2016), p3.

[17]Bahder Johan Nasution, *State of Law and Human Rights*, (Bandung: Mandar Maju, 2011), p129.

[18]Philipus M. Hardjon, *Legal Protection for the People in Indonesia*, (Surabaya: Bina Ilmu, 1987), p. 38 in Bahder Johan Nasution, Ibid., p129.

main problem in the implementation of human rights. This difference is only necessary for academic analysis, not for government practice.[19]

According to Martenson, HAM is: "*Those rights which are inherent in our nature and without which we cannot live as human being"*.[20] The words *inherent in our nature ..... as human being* are attached to all human beings, so that the existence of human rights is born by itself in every human being and not the privilege given by law or the constitution. This is closely related to the teachings of philosophers, theologians, and lawyers who viewthe existence of human rights as the grace and mercy of God Almighty to man who was created as the most perfect being on earth, who has reason, character and Conscience, in order to become a *khalifah* (leader) on this earth.[21]

According to Soedjono Dirdjosisworo, Human Rights is a set of rights attached to the nature and existence of human beings as creatures of God Almighty and is a gift that must be respected, upheld and protected by the state, law, government and every person for the honor And the protection of human dignity and prestige.[22]

Talking about Human Rights means talking about the dimensions of human life. Human rights exist not because they are given by society and the good of the state, but based on their human dignity.[23] The recognition of human existence signifies that human being as a living being is a creation of God Almighty, Allah SWT who should get positive appreciation.

Human Rights are regulated in the Human Rights Law. Article 1 Sub-Article 1 of the Human Rights Law provides a definition of Human Rights, namely:

> "Human Rights is a set of rights attached to the nature and existence of human beings as creatures of God Almighty and is a gift that must be respected, upheld and protected by the state, law and Government, and everyone for the honor and protection of human, prestige and dignity of human."

In the General Elucidation of Human Rights Law, it is mentioned that man is endowed by the Divine God of reason and conscience which gives him the ability to distinguish good and bad that will guide and direct his attitude and behavior in living his life. By reason and conscience, man has the freedom to decide on his own conduct or deeds. In addition, to compensate for that freedom man has the ability to be responsible for all the actions he does.

Basic freedom and fundamental rights are the so-called human rights

[19]Note 18, p130.

[20]Muladi, Human Rights, Politics and the Criminal Justice System, (Semarang: Dipenogoro University Publisher Agency, 2002), p1. in Henny Nuraeny, Note 16, p7.

[21]O.C. Kaligis, Anthology Legal Writing Antology, Volume 4, (Bandung: Alumni, 2009), in Note 20.

[22]Soedjono Dirdjosisworo, Indonesian Human Rights Court, (Bandung: Citra Aditya Bakti, 2002), Note 18, p33 in Henny Nuraenny, Note 16, p7.

[23]Frans Magnis Suseno, Political Ethics: The Basic Moral Principles of Modern Statehood, (Jakarta: PT Gramedia Pustaka Utama, 2001), p121 in Major El Muhtaj, Human Rights in the Indonesian Constitution From the 1945 Constitution to the Amendment of the 1945 Constitution of 2002, (Jakarta: Kencana Prenada Media Group, 2015), p1.

inherent in human nature as a gift of God Almighty. These rights cannot be denied. The denial of those rights means denying human dignity. Therefore, any state, government or organization shall assume the obligation to recognize and protect human rights of all human beings without exception. This means that human rights must always be the starting point and goal in the implementation of life in society, nation, and state.

In line with the above view, Pancasila as the basic of the state contains the idea that humans are created by God Almighty with two aspects, namely aspects of individuality (personal) and socialite (community). Therefore, the freedom of everyone is limited by the rights of others. This means that everyone carries the obligation to recognize and respect the rights of others. This obligation also applies to any organization at any level, especially the state and government. Accordingly, the state and government are responsible for respecting, protecting, defending and ensuring the human rights of every citizen and the population without discrimination.

The obligation of respecting human rights is reflected in the Preamble of the 1945 Constitution which animates the entire chapter in its body, especially with regard to equality of citizenship in law and government, right to work and decent living, freedom of association and assembly, the right to issue thoughts with verbal and written, freedom of religion and belief, the right to education and teaching.

The Indonesian nation adheres to the philosophy of Pancasila, where one of the precepts in Pancasila is Believe in the One Supreme God placed as the first precept, that is, the recognition of God as the ruler of the universe believed to be the source of life, the source of protection and the source of the fulfillment of all the necessities of life both physically and spiritual. In every human being embedded human rights that must be respected, upheld and protected by the state, law, government and everyone for the honor and protection of human dignity, including children.

The mandate of the organization of child protection is clearly contained in the constitution of the State as set forth in Article 28B paragraph (2) of the 1945 Constitution which reads: "Every child has the right to survival, growth and development and is entitled to protection from violence and discrimination".

The child right is one of the basic rights of Right 10 (ten) Human Rights. The Human Rights Law provides for the rights of children as follows:

Article 52 states:

> "(1) Every child is entitled to protection by parents, family, Society, and country. (2) The right of the child is a human right and for the benefit of the child's right is recognized and protected by law even from the moment of in the womb."

Article 57 states:

> "(1) Every child shall have the right to be raised, maintained, and guided by the parents or guardian until adulthood in accordance with the provisions of the laws and regulations. (2) Every child has the right to obtain an adoptive parent or guardian based on a court decision if both parents have died as parents.

(3) The adoptive parent or guardian referred to in paragraph (2) shall fulfill the duty as a real parent."

Article 59 states:

"(1) Every child shall have the right not to be separated from his or her parent's contrary to the will of the child himself unless there is a valid legal reason and law which indicates that the separation is in the best interest of the child. (2) Under the circumstances referred to in paragraph (1), the right of the child to remain in person and to have a permanent personal relationship with his/her parents shall be guaranteed by law."

Article 64 states:

"Every child shall have the right to seek protection from economic exploitation activities and any work that endangers him or herself, which may interfere with education, physical health, morals. His social life, and his spiritual mentality."

Article 65 states:

"Every child is entitled to protection from sexual exploitation and abuse, kidnapping, child trafficking, and various forms of abuse of narcotics, psychotropic, and other addictive substances."

Article 66 states:

"(1) Every child shall have the right not to be were subjected to torture, persecuted, or given inhuman punishment. (2) A death sentence or a life sentence cannot be imposed for a child offender. (3) Every child shall have the right not to be deprived of his or her liberty unlawfully."

In the past before the coming into effect of the Marriage Law, there was often a marriage called "hanging marriage" (a marriage suspended by mixing as husband and wife), married between children, unmarried (adult) daughters with adult males or otherwise women an adult with a boy who is still a child. Or also forced marriage, women and men who do not know each other is forced to do marriage.[24]

The background to the occurrence of interbreeding between girls who have not been *baligh* with adult men in the past has a connection with the needs of labor. Where the son-in-law after marriage, although not yet able to mix with his wife because it is still a child, he worked to assist the farm activities of the in-laws and reside in place of in-laws. This form of marriage does not result in the slightest divorce, because after the wife become adult he does not want to continue being married by a husband who is not loved and asked for divorce, so he is free to choose another mate.[25]

The child is the trust and grace of God Almighty, in whom the inherent prestige and dignity as a whole person. So the child must have the same human rights as others. Biologically and psychologically a child is different from an adult and is vulnerable to all conditions and situations that may affect the development of his or her psyche. Similarly, children as the next generation of the ideals of the struggle of the nation that has a strategic role, and has a special characteristic and trait that is expected to ensure the continuity of the existence of the nation and the State in the future.

Children belong to a group of individuals who still have close dependence with others, have innate nature, have special needs, and still need special protection and care as well. Under Article 1 Sub-Article 2 of the Child

[24]Hilman Hadikusuma, Note 7, p49.
[25]Note 24, p50.

Protection Law, forms of such protection may be any form of activity to guarantee and protect the child and his or her rights in order to live, grow, develop and participate optimally in accordance with human dignity and prestige, and Have protection from violence and discrimination.

Children are immature individuals both physically, mentally and socially and because of their vulnerable, dependent and developing conditions, children are at more risk to get of violence and exploitation than adults. On the other hand, the child is the owner of the future and therefore we are responsible for life sustainability, growth and ability to participate in decisions that affect their lives.

As for the definition of the child as mentioned in the provisions of Article 1 paragraph (1) of the Child Protection Act, a child is a person not yet 18 years of age, including a child still in the womb. Child protection must be rationally, responsibly and beneficially reflecting an effective and efficient effort on the child's own personal development. Child protection efforts should not lead to the death of initiative, creativity and other things that cause dependence on others and behave uncontrollably. So the child has no ability and willingness to use his rights and perform his duties.

Concern for the welfare of children means a serious effort to support the fulfillment of the things that children need to survive and grow optimally, such as the fulfillment of basic needs, the quality of care in the family environment, the opportunities for quality education, and the opportunity to learn to be part of the process at In his community.

Concern for the protection of the child means a serious effort to ensure that every child is protected from the threats of various forms of violence, mistreatment, exploitation and neglect that not only adversely affect the safety and physical health of the child, but also the health of mental, moral and social development of the child.

Child protection is an activity to guarantee and protect children and their rights in order to live, grow, develop and participate optimally in accordance with human dignity and values and to be protected from violence and discrimination.

One implementation of child protection is to prevent marriage at the age of the child. Because Marriage is an attitude of a prospective groom-oriented man or woman who is action-oriented. This means that marriage is a concrete work of a hope from both parties and their families. To understand marriage must first understand the meaning and philosophy of marriage itself, because marriage is not only a relationship that is the bond in the treaty alone but the marriage must be based on legal norms and religious norms. Marriage at the age of the child is a violation of human rights that ignores the dignity, dignity and degree of human beings so as to be prevented and dealt with in a just, humane way through a thorough and complete arrangement and handling.

Every society always has *rechtsidee* that is what society expect from

law, for example law is expected to guarantee justice, benefit and order and prosperity. The ideals of law or *rechtsidee* grow in the value system of society about good and bad, their views on individual and community relationships and so on, including the view of the unseen world. All of this is philosophical, meaning it concerns the view of the essence or the nature of things. Law is expected to reflect the value system either as a means that protects the values and as a means to make it happen in the behavior of society.[26]

One of the districts in Central Kalimantan Province that is rampant of child marriage age is Gunung Mas Regency. The community of Gunung Mas District consists of various tribes, ethnicities, using various languages, embracing various religions and beliefs. This complexity brings implications to the pattern of community relationships that carry the implications of interaction, interrelation, Interdependence and social.

The rise of marriage cases at the age of children in Gunung Mas regency is closely related to social factors, such as high rates of poverty and unemployment, low levels of education, and so forth. As a result of family data collection conducted by Family Planning Agency for Women Empowerment and Protection (BKBP5A) of Gunung Mas Regency in 2015, the number of marriages of children aged 11 to 18 years reached 6,663.[27]With the total population in Gunung Mas District is 109,947 inhabitants.[28]

In the 11 sub-districts scattered in Gunung Mas District, the highest child marriage age in Kecamatan Tewah reached 1,039.Followed by the sub-district of Kurun counted 887 cases, in Rungan sub-district marriage of children aged 699 and Rungan Hulu sub-district 558. Kahayan Hulu Utara sub-district totaled 503 cases, Sepang sub-district with 484 cases, Damang Batu sub-district 482 cases, Manuhing Raya District 461 cases, Mihing Raya 458 cases, West Rungan District 430 cases, Manuhing District 401 cases and Miri Manasa District marriage of child age amounted to 261 cases.[29]

In relation to the prevention of marriage at the age of the child as a form of protection of the rights and interests of the child. Thus the Government, Parents and the community provide assurance for the growth and development of children naturally, both spiritually, physically in life. And there should be real efforts to realize the welfare of children that must be done by all parents, communities and countries.

Prevention of marriage at the age of children is one form of protection of children is considered as a sufficient rule in realizing Indonesia's commitment in protecting children's rights. However, what must be remembered and reaffirmed is a commitment to pro-

[26]Bagir Manan, The Basics of Indonesian Legislation, (Jakarta: IN-HILL-Co., 1992), p17.

[27]http://news.okezone.com/read/2016/08/28/340/1475248/6-663-anak-bawah-umur-di-gunung-mas-terikat-pernikahan.

[28]Central Bureau of Statistics of Gunung Mas Regency 2015.

[29]Note 28.

tect, fulfill and respect the rights of children to be implemented in concrete programs. And this can be poured in the form of Regional Regulations.

Therefore, the Government has the interest to make preventive efforts, not only do counseling but the main form of legislation (local regulations) that regulate the prevention of marriage at the age of the child. Moreover, according to the Constitutional Court, the age limit of marriage is not a matter of constitutionality but is a legal policy open to the legislator (*open legal policy*). As the Decision of the Constitutional Court in its decision No. 30-74 / PUU-XII / 2014 dated June 18, 2015, stating the age of marriage for women is not a matter of constitutionality. Determination of the number 16 years or 18 years is actually a legal policy that is open to the law (*open legal policy*).

Based on the decision of the Constitutional Court, the Regional Government may determine and regulate its own provisions concerning the minimum age limit for marriage. Despite the enactment of the Human Rights Law and the Child Protection Act, which includes obligations and responsibilities for child protection, as well as legal sanctions against the perpetrators and those who will undermine, depriving the rights of the child, but with the complexity of the child's problems, it is necessary and urgent to establish a Regional Regulation on Prevention of Marriage at the Age of the Child. Where this Regional Regulation will further elaborate and complement things in higher legislation especially those related to child issues.

The foundation of the formation of Regional Regulation is through Law Number 23 Year 2014 regarding Regional Government as amended by Law Number 9 Year 2015 regarding the Second Amendment to Law Number 23 Year 2014 on Regional Government, which in the presence of the principle of regional autonomy, namely Granting the rights, powers and duties of the autonomous regions to regulate and manage their own governmental affairs and the interests of local communities in accordance with the laws and regulations. Regional Regulation as a type of national legislation has a constitutional basis and juridical foundation with the stipulation of the status of the Regional Regulation in the 1945 Constitution Article 18 paragraph (6) of Law No.12 Year 2011 on the Establishment of Laws and Regulations No. 23 of 2014 On Regional Government as amended by Law Number 9 Year 2015 on the Second Amendment to Law Number 23 Year 2014 on Regional Government.

CONCLUSION

The child is the trust and grace of God Almighty, in whom the inherent prestige and dignity as a whole person. So that he has the same human rights as other human rights possessed by other individuals. Children are immature individuals both physically, mentally and socially and because of their vulnerable, dependent and developing conditions, children are at more risk to get of violence and exploitation than adults. On the other hand, the child is the owner of the future and therefore we are responsible for survival, growth and

ability to participate in decisions that affect their lives.

Marriage is permissible for those who have met the age limit for marriage as provided for in Article 7 paragraph (1) of the Marriage Law that the age limit for marriage for men has been 19 (nineteen) years old and women have reached the age of 16 (sixteen) years old. So in the sense of legislation in the event of marriage at the age of less than that determined for both the bride and groom including the unlawful acts because the marriages held by both couples are still under age.

In principle, underage marriage is a marriage committed or occurs to a person at the age of the child. Underage marriage is the act of grabbing the freedoms of children or adolescents to obtain their rights namely the right to live, grow, develop and participate Optimal in accordance with the prestige and human dignity and get protection, violence and discrimination. In the perspective of human rights, the occurrence of underage marriages is a violation of the right to children including the right to education, the right to think and expression, the right to express opinions and to hear opinions, the right to rest and make use of leisure time with peers, Playing, expression and creativity and the right to protection. Child protection must be rationally, responsibly and beneficially reflecting an effective and efficient effort on the child's own personal development. Child protection efforts should not lead to the death of initiative, creativity and other things that cause dependence on others and behave uncontrollably. So the child has no ability and willingness to use his rights and perform his duties.

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