



## **Manchester Journal of Transnational Islamic Law & Practice**

### **About**

*The Manchester Journal of Transnational Islamic Law & Practice (formerly the Journal of Islamic State Practices in International Law) was founded in 2005. The Journal is independent of any State, school of fiqh or institutional affiliation and has a diverse and global editorial board. It is indexed on Scopus and available both in electronic and printed forms.*



### **Aims of the Journal**

The principal objectives of the Manchester Journal of Transnational Islamic Law & Practice (MJTILP) are to provide a vehicle for the consideration of transnational forms of Islamic law and practice. Transnationalism in Islamic law is taken broadly as communications and interactions linking Islamic thoughts, ideas, people, practices and institutions across nation-States and around the globe. In recent times, research in Islamic law has shaped narratives based on nation-States, demographics, diasporic communities, and ethnic origins instead of developing around a central core. Contemporary issues of Islamic law are increasingly linked to geographical locations and ethnic or parochial forms of religious beliefs and practices. Expressions like American, European, British, Asian, and Arab Islam have widely gained acceptance.

Despite the growing importance of dialogue to develop shared understandings of issues facing Islamic law and proposing coordinated solutions, the contemporary research and scholarship has not developed harmoniously and remains piecemeal and sporadic. Researchers and practitioners of Islamic law are drawn from a wide variety of subjects and come from various regions of the world but have insufficient institutional support for sharing information and comparing experiences. Innovation in various strands and paradigms of Islamic law and practice is stifled because there are limited spaces where evolutionary, collaborative and interdisciplinary discourses can take place. This in turn hampers the ability to build on past research and record best practices, negatively impacting a consistent and orderly development of the field. There is a need to constitute a world community of Islamic law scholars based on interactions and aspirations moving across linguistic, ethnic, geographical and political borders.

The MJTILP is inspired by the need to fill these gaps. It provides a platform to legal and interdisciplinary scholars and researchers for critical and constructive commentaries, engagements, and interactions on Islamic law and practice that are built upon configurations in contemporary contexts. It welcomes contributions that look comparatively at Islamic law and practice that apprise and inspire knowledge across national boundaries whether enforced by a State or voluntarily practiced by worldwide Muslim communities. We are equally interested in scholarships on encapsulated cultural worlds, diaspora, identity and citizenship that are embedded and circumscribed by religious ties. As it has been the practice of the journal since its establishment in 2005, it also has a specific interest in issues relating to the practice of Muslim States in international law, international law issues that may concern Muslim countries, and all aspects of law and practice affecting Muslims globally.

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## **Preventing Child Marriage in Lampung: An Analysis of the Community Embedded Implementation Process Adopted for the Provincial Regulation Number 55 of 2021 and its Harmonisation with Local Custom and Islamic Law**

**Rohmadi\***

**Abstract:** Indonesia's Marriage Act (1974) requires a minimum of 19 years of age for both boys and girls at the time of marriage with parental permission and 21 years without parental consent. However, religious courts or local officials can authorise marriages of younger girls with no requirement of minimum age in such cases. According to the data from the High Court of Religion, 649 pairs of children applied for dispensation from the age of marriage in 2022-2023 based on pregnancy out of wedlock. The Provincial Regulation Number 55 of 2021 concerning the prevention of child marriages in Lampung Province aims to counter this issue of child marriage. This article examines the implementation process adopted for Provincial Regulation Number 55 of 2021 concerning preventing child marriages in Lampung Province and argues that the community-embedded implementation process for Lampung Province regulation is harmonious with Islamic law and local customs. The Provincial Regulation is appropriate with the purpose, wisdom, and conditions for marriage set out in Islamic law. Although it is too early to assess the actual impact of this Regulation, the community embedded implementation process adopted for its implementation is likely to provide an effective means to reduce the high rate of child marriages in the Province.

**Keywords:** Provincial Regulation; Prevention of Child Marriage; Islamic Law; Lampung; Indonesia; Community Embedded Implementation

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### **I. INTRODUCTION**

The freedom of association of adolescents in Lampung Province indicates a high rate of early marriage in Lampung Province based on data from the High Court of Religion (referred to as PTA). Based on case reports data received by the Bandar Lampung Religious High Court (from January to December 2021), the number of applications for dispensation from marital age (child marriage) reached 708.<sup>1</sup> In 2022-2023, there were 649 pairs of children applying for marriage dispensation because girls were pregnant out of wedlock due to promiscuity.<sup>2</sup> The increase in early marriage in Lampung is undoubtedly in the public spotlight as a negative impact of adolescent association. Growing views on freedom of intimate relationships out of wedlock continue to blend with population growth. As a result, there are several dispensations of marriage cases in Lampung Province.

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\* Universitas Islam Negeri Fatmawati Sukarno Bengkulu, Indonesia. Email: [rohmedi@mail.uinfasbengkulu.ac.id](mailto:rohmedi@mail.uinfasbengkulu.ac.id).

<sup>1</sup> Afrianti, Vera, 'Setahun, Dispensasi Perkawinan di Lampung Mencapai 708 Perkara' (in Indonesian) ['In a Year, Marriage Dispensation in Lampung Reached 708 Cases'] *Rmollampung* (Lampung 2022) 1, 90.

<sup>2</sup> CO Kupastuntas, '649 Anak di Lampung Ajukan Dispensasi Nikah, Didominasi Hamil di Luar Nikah' (in Indonesian) ['649 Children in Lampung Apply for Marriage Dispensation, Dominated by Pregnancy Outside Marriage'] *Kupastuntas bandar lampung* (Bandarlampung, 2023) 1, 89.

In essence, marriage is important for humans because, through marriage, a person will obtain a balance in life biologically, psychologically, and socially.<sup>3</sup> Thinking of reverse logical patterns and vague rationality occurs in adolescents, so the case of adolescents experiencing pregnancy before marriage from the perspective of religious teachings is certainly a form of violation, it is a sin because it is categorised as adultery. The development of understanding permissions among society and adolescents is certainly a phenomenon that must be addressed intelligently. Therefore, from a social perspective, this event is affected by society's permissive attitude (casual attitude) towards values and norms about what is good and what is not good.<sup>4</sup> Along with global developments, efforts have emerged in Indonesia to restore the idea that law and religion cannot be separated.

The previous research relevant to this study is about positive legal principles, the customary law system, and the level of vertical implementation hierarchy and horizontal synchronisation achieved through functional relationships between legislation so that the provincial legislation process can be placed proportionally in Indonesia's legal system.<sup>5</sup> The article by Sulaiman titled 'The Domination of Tradition in Underage Marriage' carried out a study in Dungkek District, Sumenep Regency, which highlights the motives and impacts of the practice of early marriage and the extent of the community's response to early marriage.<sup>6</sup> The study found that in the Dungkek District area, which has a population of 36,620 people, there are several factors/motives behind early marriage, including cultural, religious, and economic motives. This kind of marriage is a legacy of an old tradition developed by ancestors. This tradition is revealed in the Madurese proverb "*Po' Rempo' Omo Oleka Capo' ka Embana*", which means "At the same time, there are parents who get their children married at in early age so that the grandparents can see their grandchildren."

As for religious motives, the Madura ethnic community adheres to Islamic traditions and teachings. They make Islam an ethnic identity. Unsurprisingly, the people of Madura are obedient to the *kiai*, which makes them informal leaders. The *kiai's fatwa* based on the story of the Prophet PBUH when he married Aisha at the age of 9 became the basis of religious motives in carrying out the practice of early marriage. Although it is still debatable among Muslim scholars, the community implies puberty at the age of around 13-15 years. Finally, judging from economic motives, they think that marriage between family members must be carried out to keep their wealth from falling to others.<sup>7</sup>

However, through the Lampung Governor's Regulation Number 55 of 2021, the Government aims to prevent early marriage in Lampung massively, but it is a considerable contradiction to the preservation of Lampung cultural customs still firmly held by the people of Lampung. These two phenomena provide a systematic picture of the Governor's regulatory policies that should be analysed first to provide a basis for consideration for issuing policies.<sup>8</sup> The contradictions of the regulations will be faced with the enforcement of local customs and culture. They can be used as a kind of indicator and balance between the Lampung Governor

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<sup>3</sup> Aziz Bachtiar, *Menikahlah, Maka Engkau Akan Bahagia* (in Indonesian) [*Get Married, then You will be Happy*] (Saujana 2004) 60.

<sup>4</sup> M. Hadi, 'Dispensasi Menikah' (in Indonesian) [Marriage Dispensation] *Metro unive article* (Lampung 2023) 12.

<sup>5</sup> Sulaiman, 'Dominasi Tradisi Dalam Perkawinan Di Bawah Umur' (in Indonesian) ['The Dominance of Tradition in Underage Marriage'] (2012) 19 (1) *Analisa* 1, 15.

<sup>6</sup> *ibid.*

<sup>7</sup> *ibid.*

<sup>8</sup> Sakirman Sakirman, Yulia Rizki Amanda and Le Thi Thao, 'Effectiveness of Marriage Age Limit According to Law Number 16 of 2019 in East Lampung' (2022) 1 (2) *MILRev: Metro Islamic Law Review* 164, 175.

Regulation, which can continue to be socialised so that customary law can lead the Governor's Regulation as legality supported by the Lampung indigenous people.

The Provincial Governor's Regulation Number 55 of 2021, supported by the movement of Lampung traditional leaders, is certainly good cooperation so that it can provide sex education to Lampung's teenagers comprehensively.<sup>9</sup> As stated by Berman, 'law without religion degenerates into mechanical legalism; religion without law loses its social effectiveness'.<sup>10</sup> The Provincial legislation aims to remedy exactly that by combining law and religion to have a positive impact on society.

The central issue researched in this article is how the legislation process of Governor's Regulation Number 55 of 2021 in Lampung Province can be offered as a model for forming legislation sourced from the substance of the society's requirements into a substantive regulation implemented by law. The article examines the community embedded implementation process adopted in the formation of the gubernatorial regulation from the perspective of customary and Islamic law. The following discussion in this article is systemically structured: Part II examines the causes of child marriages, and Part III analyses the impact of child marriage. Part IV then probes the controversy over permission for child marriage in Islamic law. Part V of the article gives a detailed account of the Lampung Provincial Regulation Number 55 of 2021 concerning the prevention of child marriages in Lampung Province. Part VI of the article examines the community-embedded process adopted in the formation of this regulation and its alignment with customary and Islamic law. The article concludes that the Provincial Regulation is appropriate with the purpose, wisdom, and conditions for marriage set out in Islamic law. Although it is too early to assess the actual impact of this Regulation, the community embedded implementation process adopted for its implementation is likely to provide an effective means to reduce the high rate of child marriages in the Province.

## II. CAUSES OF CHILD MARRIAGES

The main drivers and causes of early marriage are examined below.

### A. Weak Economic Conditions

Living consumptively, family needs are increasing while income does not increase to meet these needs. Economic factors: the lower the family's economic level, the higher the chance for someone to get married early. A girl's family will be reduced by one family member who is responsible (food, clothing, education, and so on) and other factors such as socio-cultural, educational, religious, difficulty to get a job, mass media, views and beliefs, and parents.<sup>11</sup> Early marriage has a good impact on health, education, and poverty.<sup>12</sup> This marriage usually occurs when the young woman comes from an economically disadvantaged family. The education will provide understanding in choosing or deciding on an opinion.

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<sup>9</sup> Nunik, *Pendidikan Seks Bukan Hal Tabu* (in Indonesian) [*Sex Education is not Taboo*] (Lampung: Lampost.co 2021) 2, 3.

<sup>10</sup> Harold J. Berman, *The Interaction of Law and Religion* (London: SCM Press 2019) 23.

<sup>11</sup> Ismiati Ismiati, Fuji Khairani and Teguh Achmalona, 'Literature Review: Factors Caused an Increase the Number of Early Marriage during the Covid-19 Pandemic' (2022) 9 (1) *Jurnal Ners dan Kebidanan* 112, 120.

<sup>12</sup> Vania Zulfa, Uswatun Hasanah and Fitriana Kusaini, 'The Phenomenon of Early Marriage and Its Impact on Family Resilience' (2024) 9 (1) *Journal of Family Sciences* 48, 58.

Family life that is all lacking and living in a circle of poverty is a triggering factor for most families to want to let go of the burden of life, one of which is to allow their teenagers to marry early so that they can escape poverty. These many dimensions of poverty are then manifested in the form of malnutrition, water, health care, decent housing, and low levels of education. The National Development Planning Agency (BAPPENAS) explained that poverty is a situation of deprivation that occurs not because the poor want it, but because it cannot be avoided with the strength that exists in it.<sup>13</sup>

## **B. Lack of Education**

A good education will be achieved when poverty alleviation is achieved, but the opposite can happen. So fundamentally, a low level of education can trigger and result in early marriage because they do not get the right mindset and social ethics. Based on the results of a research survey in Lampung Province, it was obtained that the average education of parents and adolescent couples who married early was still relatively low; no teenagers continued their education to higher education and did not even complete 12 years of primary education. The low knowledge of parents makes them not feel guilty about marrying their children at any age.<sup>14</sup>

In reality, it can be seen that the lower a person's education is, the higher the likelihood of carrying out early marriage. Education improves the quality of life of individuals, individual mindsets, and behaviours. The low level of parental education has led to a tendency to marry their underage children. The younger the age of marriage presents the lower the level of education achieved by the child. Young women with low knowledge are 2.3 times more likely to marry at an early age than young women with high knowledge. Young women who have low knowledge will focus more on getting married young. Therefore, education is something important.<sup>15</sup>

## **C. Lack of Knowledge and Understanding of Problems with Early Marriage**

Weak knowledge cannot stem the global movement so fast and influence an increasingly consumptive lifestyle. The majority of people are not aware of the impact of early marriage. Adolescent girls who marry at an early age are considered vulnerable to women's reproductive health, which can cause the maternal and fetal death and impact their wellbeing in the absence of mental readiness of the souses, resulting in domestic violence and ending in divorce. Lampung Province shows that the rate of child marriage incidents in the Central Lampung Region was 35% in 2018, and data from the Religious Affairs Office (KUA) Way Seputih couples who got married in 2020 were 120. Based on the results of the preliminary presurvey through an interview conducted by the author in the Way Seputih District, the incidence of early marriage in the area is greatly influenced by economic factors because it reduces the burden on parents. Moreover, a lack of knowledge and education about the consequences of early marriage also results in underage marriage.

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<sup>13</sup> Khodijah Khodijah, Bagong Suyanto and I. B. Wirawan, 'Early Marriage: Understanding Motivations and Impact' (2024) 16 (1) *Muwazah* 19, 43.

<sup>14</sup> Kasiati Kasiati and Dina Isfentiani, 'Factors Encouraging Early Marriage Among Adolescent Girls in East Java of Indonesia' (2020) 6 (1) *Seajom: The Southeast Asia Journal of Midwifery* 1, 6.

<sup>15</sup> Eka Yuli Handayani, 'Faktor Yang Berhubungan Dengan Pernikahan Usia Dini Pada Remaja Putri Di Kecamatan Tambusai Utara Kabupaten Rokan Hulu' (in Indonesian) ['Factors Associated with Early Marriage in Adolescent Girls in Tambusai Utara District, Rokan Hulu Regency'] (2014) 1 *Jurnal Maternity and Neonatal* 203, 212.

### III. THE IMPACT OF EARLY MARRIAGE

Underage marriage certainly has a relatively wide range of impacts, not only has an impact on adolescent married couples but also on newly formed families. It further affects society at large. The negative impact can be seen in the medical, psychological, socio-cultural, and economic impacts. The impact of the intergeneration cycle of growth failure also occurs due to early marriage. Based on studies, it was found that early marriage leads to a decrease in fertility and negatively impacts on the reproductive organs.<sup>16</sup> Premature delivery of hyperemesis and anaemia in adolescent girls, the complication with childbirth, and babies who do not get exclusive breastfeeding are the ultimate consequences of early marriage. Marriages that take place in adolescence will generally cause problems, as follows:

#### A. Biologically

The reproductive organs are still not ready to accept the pregnancy so it can cause various forms of complications. Maternal mortality in pregnant women and childbirth under the age of 20 years is 2-5 times higher than maternal mortality that occurs at the age of 20-29 years.

#### B. Psychologically

Generally, young couples are still immature in their psychological state, so they are still labile in dealing with problems that arise as a result of marriage. The ultimate impact that can occur is divorce because divorce usually occurs in couples who are relatively young at the time of marriage.

#### C. Socioeconomically

The older a person gets, the more likely it is to mature in the socioeconomic field, which will also be more apparent. In general, with age, the urge to earn a living will become stronger for the support of life. So, it is very open for anyone to carry out permissive actions.<sup>17</sup>

### IV. CHILD MARRIAGE IN ISLAMIC LAW

The marriage laws and regulations of each country have different marriage age limits because each country has different reasons and legal policies to adapt to the conditions and culture of each country, including Islamic countries. Islamic law does not set a minimum and maximum age limit for marriage but sets the age of puberty as a benchmark for readiness to receive the burden of *taklifi* (the provisions of Allah and his prophet (peace be upon him) that relate directly to human actions). Likewise, the previous scholars did not discuss the minimum age limit but instead studied the law of child marriage more deeply.<sup>18</sup>

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<sup>16</sup> M. Junaedi and others, 'The Role of Schools in Early Marriage Education and Reproductive Health Rights (Case Study: Students in Wonosobo District)' (2022) 14 (3) AL-ISHLAH: Jurnal Pendidikan 2727, 2736.

<sup>17</sup> Aghnat Bintang Angkasa, 'Early Marriage Problems in Indonesia' (2021) 1 (1) Semarang State University Undergraduate Law and Society Review 51, 68.

<sup>18</sup> Yasin Yetta, Ahmad Rajafi and Syahrul Mubarak Subeitan, 'Understanding the Implications of Marriage Law Amendments: Marriage Dispensation Cases in Indonesian Religious Courts' (2024) 9 (1) Al-Istinbath: Jurnal Hukum Islam 121, 127.

Child marriage in *fiqh* is termed *nikah al-saghir* or *al-zawwaj saghirah*, which is interpreted by *ulema* as child marriage, i.e., marriage of boys or girls who have not yet reached puberty.<sup>19</sup> Puberty is a period of entering adulthood that is characterised by the release of semen for men and menstruation for women.<sup>20</sup> Of course, everyone does not have the same when and at what age they enter this period; for example, some girls begin to experience menstruation at the age of 9, some start at the age of 16, and so on, because this is influenced by different biological maturity. Likewise, there is no uniformity with the maximum limit. Imam Abu Hanifah said that the final age limit for children is the age of 18 years for men and 17 years for women. However, according to most scholars, if a person has reached the age of 15 years, it is the final age for both men and women.<sup>21</sup> Wahbah al-Zuhailiy explains that puberty to marry a person reaches the threshold age for marriage, where according to him the age of marriage is when a man starts with *ihtilam* (dream wetting). This is when he has reached the age of puberty and has been burdened with *taklifi* (the provisions of Allah and his prophet (peace be upon him) that relate directly to human actions), and other *wadh'i* (legal provisions governing causes, conditions, and barriers) laws. If calculated, it happens at the age of about 15 years, according to Imam Shafi'i and Ahmad.<sup>22</sup> "Boys and girls are considered to have reached puberty when they have reached the age of 15".<sup>23</sup>

The Qur'an stipulates that a person who wants to get married must be physically and spiritually capable and ready. Allah SWT says in the Quran: "Marry those who are still celibate among you and also those who are worthy (to marry) from your servants, both male and female. If they are poor, God will empower them with His gifts. Allah is Vast and All-Knowing."<sup>24</sup> The Prophet PBUH requires the existence of "ability" that can be interpreted as physical and mental readiness of prospective married couples to carry out household responsibilities and duties, and this ability can, of course, only be exercised by people who have grown up physically and mentally.<sup>25</sup> An integrative-interdisciplinary understanding is needed to understand the basic joints of building a happy family surrounded by love and affection. It is not enough to be understood only in a textual-monodisciplinary manner that only refers to one field of study. Likewise, in understanding the *Nas* (teachings of the Qur'an and Hadith) of marriage, it is necessary to highlight various relevant legal aspects, including using a sociological-anthropological approach, where the *Nas* is interpreted and applied.<sup>26</sup> Islamic teachings do not prohibit child marriage (early marriage) but also do not encourage and support the occurrence of child marriage, primarily if it is carried out without paying attention to the mental dimension, the best rights of children, and physical and mental factors of children (especially girls). The purpose of Shari'ah is the maturity of both parties in forming a household so that a household

<sup>19</sup> Mahendra Mahendra and Violis Maisuri, 'Early Marriage in Indonesia Islamic Family Law Perspective' (2022) 1 (2) MILRev: Metro Islamic Law Review 282, 293.

<sup>20</sup> Agus Purnomo, Nor Salam, Mukhammad Zamzami and Abu Bakar, 'Dimensions of Maqāṣid Al-Sharī'ah and Human Rights in the Constitutional Court's Decision on Marriage Age Difference in Indonesia' (2003) 7 (3) Samarah: Jurnal Hukum Keluarga dan Hukum Islam 34, 56.

<sup>21</sup> Marwah Kamaruddin, *Batas Usia Nafkah Anak dalam Islam* (in Indonesian) [*Age Limit for Child Maintenance in Islam*] (Ulee Kareng Banda Aceh: Lembaga Naskah Aceh 2013) 50, 56.

<sup>22</sup> Wahbah Al-Zuhailiy, *Tafsir al Munir* (in Arabic) [*Explanation of al Munir*] vol III (Dar al-Fikr 2005) 258, 263.

<sup>23</sup> Muhammad Jawad Mughniyyah, *Al Ahwal al Syakhsiyyah* (in Arabic) [*Family Circumstances*] (Dar al Fikr 2010) 16.

<sup>24</sup> Qur'an Surah An-Nur (the Light) 24:32.

<sup>25</sup> Mariani Amberi, 'Efforts to Prevent Child Age Marriage in The Study of Islamic Legal Philosophy and Indonesia Positive Law' (2003) 7 (1) Samarah: Jurnal Hukum Keluarga dan Hukum Islam 242, 244.

<sup>26</sup> Siti Musawwamah and others, 'Resistance to Child Marriage Prevention in Indonesia and Malaysia' (2023) 23 (1) Ahkam 256, 262.

that is *sakinah* (peaceful), *mawaddah* (affectionate), and *warohmah* (blissful) is realised<sup>27</sup> and gives birth to strong and healthy offspring, not weak offspring.<sup>28</sup>

One of the reasons for the derivation of Islamic Shari'ah is to maintain the sanctity of offspring (*hifz al-nasl*) born from a valid marriage. To produce quality offspring, the physical and spiritual readiness of the prospective groom and bride, maturity of age, and physical readiness are needed to carry out the reproductive process. Ibn Shubrumah argued that underage boys and girls are not recommended to be married until they reach the age of puberty and with the consent of the person concerned. According to the Indonesian Ulema Council (referred to as MUI in Indonesia) *fatwa*, the age considered appropriate to marry is measured by the ability to do and receive rights (*ahliatul ada' wa ahliyyatul wujub*). *Ahliyatul ada'* is the nature of the ability to perform legal actions for a person who is considered perfect to account for his actions, both those following the law and those not following the law. *Ahliyyatul wujub* is the ability to accept the rights to which they are entitled, but they cannot yet be burdened with obligations and responsibilities. Therefore, child marriage is not recommended, considering that a person who is not yet an adult is not able to manage property and is not able to bear the obligations in life as husband and wife.<sup>29</sup>

## V. THE LAMPUNG GOVERNOR'S REGULATION NUMBER 55 OF 2021 CONCERNING PREVENTION OF CHILD MARRIAGE

The Lampung Provincial Government in 2021 issued a regulation on the Prevention of Child Marriage through Lampung Governor Regulation Number 55 of 2021. The Governor's Regulation contains VIII (eight) Chapters, with the following chapter divisions: Chapter I (one) discusses general provisions. Chapter II (two) discusses the goals and scope. Chapter III (three) discusses efforts to prevent marriage at a child's age. Chapter IV (four) discusses institutional strengthening. Chapter V (five) discusses complaints. Chapter VI (six) discusses monitoring and evaluation. Chapter VII (seven) deals with funding. Chapter VIII (eight) conclusion. The scope of the Lampung Governor's Regulation is the efforts to prevent marriage at a child's age, institutional strengthening, assistance and empowerment efforts, complaints, monitoring and evaluation, and financing. This Governor's Regulation is intended for children, parents, families, communities, and all stakeholders.

The Regulation was formed based on several objectives, including the aim to realise child protection and ensure the fulfilment of children's rights so that they can live, grow, develop, and participate optimally following their dignity and the dignity of humanity. The aims and objectives of the Regulation include realising quality and prosperous children, preventing acts of violence against children, preventing acts of domestic violence, improving the quality of maternal and child health, maximising the benefits of twelve years compulsory learning programme, and preventing school dropouts, reducing maternal and infant mortality rates, reducing the divorce rate, reducing poverty rates, and increasing the human development index.

Indeed, the impact caused by underage marriage makes it necessary to prevent underage marriage as a fundamental and urgent matter. For this purpose, various elements concerning

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<sup>27</sup> Berlia Sukmawati and Mu'ammam Khadafi, 'Family Achievements that are Sakinah, Mawaddah, Warahmah' (2022) 1 (2) MILRev: Metro Islamic Law Review 243, 256.

<sup>28</sup> Muhammad Juni Beddu and others, 'Caesarean Section in the Perspective of Family, Health, and Islamic Law' (2024) 9 (1) Al-Istinbath: Jurnal Hukum Islam 354, 366.

<sup>29</sup> Muljan and others, 'Preventing Child Marriage in Bone District, South Sulawesi: Perspective of Islamic Family Law' (2024) 7 (1) El-Usrah: Jurnal Hukum Keluarga 121, 121.



the government apparatus and the community are outlined in Lampung Governor Regulation Number 55 of 2021 concerning the prevention of marriage at the age of children. Article 3 paragraph (2) of this Regulation states: "Prevention of marriage at the age of children is carried out by the Regional Government, parents, children, the community and stakeholders." The community-based approach and participation of all stakeholders in the efforts to control child marriage are likely to prove influential in the prevention of underage marriage.

The role of the Regional Government in efforts to prevent child marriage is provided in the Article 5 of the Regulation. The Regional Government is required to make efforts to prevent child marriage by prioritising the best interests of the child. As referred to in paragraph (1) of Article 5, efforts to prevent child marriage, based on the principle of networking with all elements of society and stakeholders, are coordinated by the regional apparatus in charge of empowerment, child protection, and population control. In the context of the prevention of child marriage, the regional apparatus in charge of health affairs is required to carry out certain tasks including preparing materials for child reproductive health education and conducting physical, reproductive, and psychological health examinations of children. The health affairs department is also required to "socialise" the prevention of child marriage in the community and provide an understanding of adolescent reproductive health, which aims to prevent and protect adolescents from risky sexual behaviours and other sexual behaviours that have the potential to cause unwanted pregnancies. They are also discouraged from issuing freely a recommendation letter for marriage for the purposes of dispensation from the age of marriage from local authorities or religious courts.

In the context of preventing marriage at a child's age, the regional apparatus in charge of health affairs is also required to carry out several community-embedded functions. The regional apparatus is needed to provide socialisation, facilities, and debriefing to teachers related to reproductive health and conducting socialisation and guidance on the prevention of marriage at a child's age to students.

Efforts to prevent marriage at the age of children are firmly inseparable from the role of the family. The family often supports the occurrence of child marriage and even, in certain cases, forces children to get married at an early age. Although the Child Protection Law firmly conveys violations to parents who do not hesitate to marry their children before the legal age, unfortunately, this issue is still widely encountered in society. Specifically, regarding the prevention of child marriage, the state regulation provides that "Parents have obligations and responsibilities to prevent the occurrence of marriage to children."<sup>30</sup> Based on the content of the Article 26 (1) c, one of the primary keys to the success of these prevention efforts is parents. Efforts to avoid marriage at a young age through the family can be started by introducing the values that must be followed by children in their associations, especially associations with the opposite sex.

In Article 7 of the Regulation, it is stated that every child plays a role in making efforts to prevent marriage at the age of children by maintaining their dignity and respect and maintain the good name of parents, guardians, and teachers, love for family, community, friends, homeland, and nation. The Regulation further stresses on the need for performing worship and following of religious teachings, obtaining reproductive health education, not engaging in risky sexual behaviours and other risky behaviours that have the potential to lead to unwanted pregnancies that force marriage at a child's age. Article 7 of the Regulation also requires

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<sup>30</sup> Child Protection Law (2014), Article 26 paragraph (1) clause c.

children to report attitudes, behaviours, and actions that lead to violence to parents, community leaders, teachers, and authorised officers.

Additionally, the specific role of the community referred to in Article 72 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection is as follows: "The community has the right to get the widest possible opportunity to play a role in child protection" and in Article 72 paragraph (2) it explains "the role of society as referred to in paragraph (1) is carried out by natural persons, child protection institutions, social institutions, non-governmental organisations, educational institutions, religious institutions, business entities, and mass media". The same community-embedded approach is found in Article 8 of Lampung Governor Regulation Number 55 of 2021 concerning the Prevention of Child Marriage, namely, the role of the community and stakeholders in efforts to prevent child marriage. This is carried out by reporting through the village head or government officials in the village if there are school-age children in their area who are not in school. The community is also made responsible for supervising the children's social environment, providing input in the formulation of policies related to efforts to prevent child marriage, reporting to the authorities in the event of forced marriage at the age of the child, and forming a joint movement for the prevention of child marriage.

## **VI. ANALYSIS OF THE COMMUNITY-EMBEDDED IMPLEMENTATION PROCESS**

The sociological school of jurisprudence is a legal theory that studies the influence of law on society with an approach from law to society. According to this school of jurisprudence, there is a difference between "positive law" on the one hand and "living law" on the other. It suggests that positive law will have effective force if it contains, or is in harmony with, the law that lives in society. The law must be seen as a community institution that functions to meet social needs. In addition, it is recommended that law be studied as a process (law in action), distinguished from written law (law in books).<sup>31</sup>

In the digital and social media age, global connectivity has certainly created a wave of changes in the habits of today's adolescents, including free sex, consumptive lifestyles, and the development of permissivism to legalise all social changes that occur even though they are contrary to positive laws, customs, and religion.<sup>32</sup> According to the data from religious courts in Lampung recorded that in the last five years, 2,654 children applied for marriage dispensation. The majority of marriage dispensation applications are due to risky sex or promiscuity. In the last five years, most marriage dispensation applications occurred in 2020. In that year, 798 children applied for marriage dispensation.<sup>33</sup>

In 2021, there were 722 children, and in 2022, there were 714 children seeking dispensation for marriage, meanwhile, in 2019, there were 283 children, and in 2018, there were 137

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<sup>31</sup> Sulistiyowati and Restu Monika Nia Betaubun, 'Fenomena Pernikahan Dini Dan Tinjauannya Secara Sosiologi' (in Indonesian) ['The Phenomenon of Early Marriage and its Sociological Review'] (2024) 1 (2) Papsel Journal of Humanities and Policy 100, 111.

<sup>32</sup> Ahmad Rusyaid Idris, Muhammad Khusaini and Syaiful Anwar Al-Mansyuri, 'Contemporary Islamic Law in Indonesia: The Fulfillment of Child Custody Rights in Divorce Cases Caused by Early Marriage' (2024) 3 (1) MILRev: Metro Islamic Law Review 1, 21.

<sup>33</sup> Tali Tulab, 'Efektivitas Aturan Batas Minimal Usia Perkawinan Dalam Meminimalisir Permohonan Dispensasi Kawin Di Pengadilan Agama' (in Indonesian) ['The Effectiveness of the Minimum Marriage Age Rule in Minimising Marriage Dispensation Requests in Religious Courts'] (2022) 19 (1) Istinbath: Jurnal Hukum 22, 36.

children. From January to May 2021, 240 cases were resolved.<sup>34</sup> The strong role of indigenous people contributes greatly to the legality of early marriage. To prevent early marriage, the community-embedded approach taken by the Governor's Regulation No. 55 of 2021 is well articulated. This approach means that the community is educated and involved in the implementation process to avoid contradictions and conflicts. The Regulation is meant to become a synergistic collaboration between the government and traditional leaders so as to get the best solution for the prevention of early marriage. As the community has a good understanding of Lampung's culture and customs, especially those that continue to become famous and understood too simply by the community, education about these customs is very necessary.

So far, cases of early marriage are still dominant in the Kotabumi and Gunung Sugih areas, Central Lampung. So, various efforts have been made by the government, especially socialisation concerning early marriage in Lampung Province, according to Governor Regulation No. 55 of 2021. This effort is supported by the Bandar Lampung High Court of Religion (PTA), which again has the opportunity to be part of the 2022 Lampung Province Integrated Legal Counselling activities. The Kalianda Religious Court, in collaboration with the South Lampung Regency Government, will hold a socialisation about the dangers and impacts of early marriage to the community to reduce the number of early marriages in the region.

The community-based efforts to prevent early marriage include women's empowerment in preventing early marriage. One of the consequences of the Governor Regulation No. 55 is empowerment of children and adolescents to tackle the problem of early marriage. The problem of early marriage occurs not only due to internal factors or the child's desire but also due to the encouragement of the environment or even the parents themselves. Environments that have the custom or habit of marrying their children under the legal age and parents have the mindset of marrying their children under legal age because it is considered to reduce family's economic expenditure. Indeed, the Regulation requires the government to carry out prevention of child marriage with a gradual system composed of various stages, namely:

1. Awareness Stage: This stage provides understanding to the economically deprived families that they have the right to be more prosperous in life. In addition, they are given the understanding that they can get out of their poverty. At this stage, people are made to understand that empowerment comes from themselves.
2. Capacity building stage: This stage aims to improve the ability of the poor so that they have the skills to manage the opportunities that will be provided in this stage by providing pieces of training, workshops, and similar activities that aim to improve the life skills or abilities of the community.
3. Empowerment stage: Stage in which the community is given opportunities following their abilities through active and sustainable participation. This is carried out by providing a greater role gradually under their capacity and capabilities, accommodating their aspirations and being guided to self-evaluate the choices and the results of the implementation of the choices.

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<sup>34</sup> Sudirman Sudirman and Achmad Najib, 'Rekonsepsi Pencegahan Kawin Anak dan Dispensasi Kawin Perspektif Undang-Undang Nomor 16 Tahun 2019' (in Indonesian) ['Reconception of Child Marriage Prevention and Marriage Dispensation from the Perspective of Law Number 16, 2019'] (2022) 2 (1) *Syakhshiyah Jurnal Hukum Keluarga Islam* 36, 48.

4. Socialisation of marriage law: Under 19 years old at the time of applying at the District KUA can be sure that their marriage dispensation request will be rejected. If they still insist on getting married, they will be directed to the Religious Court to undergo a hearing.

Likewise, Islamic values are important for Lampung culture because most Lampung people embrace Islam. Thus, the relationship between Islamic values and Lampung culture is quite dominant in the Indonesian nation. Islamic accommodation with the local cultural system through the interaction of traditional symbols that apply in the Lampung Pepadun community is necessary and firmly rooted in society. Local communities in Lampung must still follow the rules in Islamic law as well as in customary law because if a tradition is not followed by Islamic law and correct customary law, it will be feared that mistakes will occur in the implementation and settlement of it. In Article 2 of the Compilation of Islamic Law,<sup>35</sup> it has been explained that marriage is a very strong contract or *mitsaqan ghalidzan* to obey Allah's commands and carry it out as worship. It is also mentioned in Article 3 of the Compilation that marriage aims to realise a household life that is *sakinah* (peaceful), *mawaddah* (affectionate), and *Rahmah* (blissful).

The custom of *sebambangan* (Lampung customary marriage by running away with the prospective wife with a certain agreement), which often involves child marriage without consent from parents, at this time is often misinterpreted by the community. The community considers *sebambangan* to be a shortcut to marriage because of a problem, for example pregnancy out of wedlock, where *sebambangan* is also often interpreted as elopement. There is a need to reevaluate this tradition based on the principles of Islamic law on marriage and the objectives of marriage set out in the Qur'an and Hadith. Importantly, Islamic law does not prevent creation of relationships for the purpose of marriage. In Islamic law, *khitbah* (engagement) is an initial stage of marriage between a man and a woman because Islamic marriage law requires the bride-to-be to know each other, that is, to know the offspring, religion, wealth, and beauty of character of the couples as ordered by the Prophet PBUH. However, Islamic law provides specific conditions for this, which includes prohibition of *zina* (out of wedlock sexual intercourse). In this, from the Islamic point of view, the Lampung Provincial Regulation is in accordance with the purpose, wisdom, harmony, and conditions of marriage in Islam.

## VII. CONCLUSION

Several factors cause underage marriage in Lampung, among others: factors of economic weakness, factors of low education, and factors of low knowledge and understanding of early marriage. Underage marriage has several negative impacts mentally, economically, health-wise, and others.

The Governor Regulation No. 55 of 2021 concerning the prevention of child marriage is one of the efforts made by the Lampung Provincial Government to reduce the high rate of child marriages in Lampung Province. Implementing the Governor Regulation is also a form of community embedded collaboration that synergises with Lampung traditional leaders so as not to cause conflicts between traditional and cultural thoughts and to prevent child marriage. The synergy between the Government's programmes, official duty bearers, and traditional and religious community leaders makes this a truly community-made and community-led effort.

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<sup>35</sup> The Compilation is referred to as *Kompilasi Hukum Islam di Indonesia* (in Indonesian) [*Compilation of Islamic Law in Indonesia*] of 1989.

Indeed, efforts to prevent child marriage required in the Governor's Regulation are significantly diverse and required to be carried out by many parties. The Regional Government, parents, children, communities, and stakeholders are all involved and assigned specific roles to carry out the prevention of marriage at child age.

From the Islamic perspective, the Provincial Regulation is harmonious with the purpose, wisdom, and conditions for marriage set out in Islamic law. Although it is too early to assess the actual impact of this legislation, the community-embedded implementation process adopted for this legislation is likely to provide an effective means to reduce the high rate of child marriages in the Province.