Application of Law Number 16 of 2019 to Law Number 1 of 1974 on Marriage

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Abstract

Purpose of this study is to analyze the problems that arise in the implementation of Law no. 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. This change stipulates the age limit on the original minimum age limit for women to marry is 16 years and then amended by increasing it to 19 years, equivalent to men. This amendment accommodates the Constitutional Court Decision No. 22/PUU-XV/2017 at the request of a judicial review. This research examines normative juridical is descriptive. The addition of the age limit for girls to 19 years of marriage is to prevent minors marriages. After the passage of the new marriage law, it turned out that it even showed an increase in public submissions of requests for marriage dispensation for their underage children, the lack of firmness of the law on child marriage regulations who are still underage. This shows that this law is not yet optimal in its implementation in society.

Keywords: Problematics, Marriage, Underage

Introduction

Humans instinctively need a partner to accompany their lives. Every human being has the dream of living happily with a partner, sailing the ark of the household in a sacred bond of marriage. Marriage is a crucial thing in the reality of human life. The existence of domestic marriages can be enforced and fostered in accordance with religious norms and community life systems. In a household, two people of the opposite sex (husband and wife) are gathered together in order to obtain offspring as successors. (Manan, 2017) Marriage is a physical and profound connection between a man and a lady being a couple, marriage expects to frame a glad and everlasting family dependent on the one godhead. (Presiden Republik, n.d.) this is confirmed in article 1 of law number 1 of 1974 concerning marriage, hereinafter referred to as the marriage law. The decision of the constitutional court number 22/PUU-xv/2017 states that the marriage law is not in sync with the child protection act. The Minors security law specifies that a kid is somebody who isn't yet 18 years of age. Meanwhile, referring to article 7 paragraph (1) of the marriage law, the minimum age for marriage for women is 16 years. If placed in the context of child protection, the asymmetry in question has an impact on the guarantee and protection of children's constitutional rights in Article 28B paragraph (2) of the 1945 Constitution.

Law number 1 of 1974 concerning marriage has undergone changes to article 7 paragraph (1) which originally stated that the minimum age limit for women to marry was 16 years and was later amended by increasing it to 19 years, equivalent to men. This amendment accommodates the constitutional court decision no. 22/PUU-xv/2017 on the application for judicial review of article 7 paragraph (1) because it is considered unconstitutional, discriminatory and violates the rights of children with underage marriages. The minimum age limit for marriage for women aged 16 years is contrary to law number 35 of 2014 concerning child protection, as it has been determined that child is somebody who isn't yet 18 years of age.

The principle adopted by the marriage law is that the prospective husband and wife must be physically and mentally mature to do a marriage, so the motivation behind marriage can be realized properly and does not end in divorce and obtain healthy and good offspring. Therefore, marriages between prospective husbands and wives who are still not old enough must be prevented (Sudarsono, 2005). So according to the
mandate of the constitutional court decision number 22/puu-xv/2017, it was implemented with the ratification of law number 16 of 2019 regarding amendments to law number 1 of 1974 concerning marriage. Article 7 of law number 16 of 2019, explains that marriage is possibly allowed if a man and a lady have arrived at the age of 19 years.

Development of the time of marriage in girls from the age of 16 years to 19 years is to prevent the risk of underage marriage. Research in the asia-africa region shows that child marriage is caused by patriarchal ideology, gender-discriminatory norms, low education and economic factors (Svanemyr et al., 2015). Based on data from unicef indonesia (2020b) it shows a slow decline in child marriage from year to year, but the numbers still make indonesia the second country with the number highest of child marriages in southeast asia after cambodia. (2021). According to bps data, there are approximately 85% of girls in indonesia who end their education period because of marriage (Statistik, 2015)

The increase in the age limit from 16 (sixteen) years to 19 years for women is expected after marriage, lower rates of birth and decrease the danger of maternal and children mortality. In addition, it can also fulfill the rights of children to upgrade the development and improvement of children including parental help and furnish kids with admittance to instruction as high as could really be expected.

Underage marriage forces girls to mature before they are physically and emotionally mature, underage marriage has harmful effects on their health, education, economic and social development (Agege et al., 2018) Underage marriage can decrease the human resources because they are cut off to get an education, then produces an increase in poverty (Hanum & Tukiman, 2015) With the maturation of the marriage age stipulated in Law No. 16 Year 2019 on the Amendment of the UUP is expected to prevent occurrence of underage marriage and can improve the level of education, women's health, social life as well as economics.

Considering that marriage does not only unite men and women, but also requires careful preparation both from an economic and psychological perspective from each party so that divorce or domestic violence is less likely to occur. That the existence of physical and mental maturity of the two prospective brides is very important because in marriage, maturity and a great sense of responsibility are needed in forming a family. This maturity by adding the marriage requirement limit for women to be 19 years the same as men, it is hoped that a relationship pattern that is parallel to the minimum marriage limit is considered no longer relevant at this time so that it needs to be immediately renewed. (Minutes of the Constitutional Court, 2017) The problem of the authors in this study is What are the problems with the implementation of Law Number 16 of 2019 as an Amendment to Law Number 1 of 1974 concerning Marriage in Indonesia?

Method

This is is a normative juridical exploration with a lawful, calculated and case approach, essential law and optional law.

Finding and Discussion

A. The problem that arises is the change in the age limit of girls

Change in the age limit for child marriage is one of the state's efforts to suppress population growth and give women the right to be better prepared both physically and mentally before facing family life. also to get the right to a proper education, which is 12 years.

The after-limit has at least several purposes as stated in the Explanation of the General Part of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, including minimizing divorce
rates, obtaining quality offspring, reducing birth rates, reducing maternal and child mortality, and fulfilling children's rights and the development of Law Number 16 of 2019 concerning Amendments to Laws. Law Number 1 of 1974 concerning Marriage was ratified and enforced since October 14, 2019, the change resulted in the marriage age limit initially 19 (nineteen) years for male and 16 (six) twelve) years for female gender is changed to 19 (nineteen) years for both men and women (Waqiah, 2019). Law The new provides justice than UUPerkawinan previously considered inadequate and discriminatory against children woman. That's because the least age limit for marriage is determined different between men (19 years) and women (16 years) but not enough become the ultimate weapon to deal with child marriages that occur in Indonesia. Determining the age limit for marriage is very important, because a marriage requires biological and psychological maturity (Matnuh, 2016).

In the implementation of Law No. 16 of 2019 concerning Amendments to Law No. 1 1974 concerning Marriage, in the course of time there are several The problems that the author found are:

1. There is a Marriage Dispensation.

Change of Marriage Law to Law Number 16 of 2019, is expected to bring a very big change in the implementation of marriage, especially at the age limit of marriage and minimize negative social, economic impacts as happened in the Old Marriage Law. Revision in Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage namely Article 7 paragraph (1), namely "Marriage is only permitted if a man and a woman" has reached the age of 19 (nineteen) years. And Article 7 paragraph (2) states "In case of a deviation from the age arrangements " as referred to in paragraph (1), the guardians of the male as well as guardians the lady can demand an allotment to the Court because: urgently accompanied by sufficient evidence. Here is an opportunity for perform marriages for those who are not of the age regulated in Article 7 paragraph (1), namely the age of 19 years. There are provisions for dispensation this seems to break high expectations for changes to Article 7 paragraph (1).

Marriage dispensation is submitted by a woman or a man or his parents apply for a marriage dispensation to the Religious Court for those who are Muslims or to the District Court for others. Marriage dispensation is a concession given by the court to prospective husbands and wives who have not reached the lowest age limit in carrying out a marriage (Setiasih, 2017)

There is a change in the minimum age limit for women in the Marriage Law from 16 years to 19 years, causes prospective brides between the ages of 16-19 years who Previously, they did not require a marriage dispensation, now they have to apply for dispensations in order to have the option to complete a marriage. This is what then increase the number of marriage dispensation applications in Indonesia.
Data from the Religious Courts Agency recorded 64.2 thousand child marriage dispensations in 2020. This figure increased by about three times or 177.7% from 2019 which was 23.1 thousand marriage dispensations. It would appear the addition of the age limit for marriage has caused many parents to apply for a marriage dispensation.

Women's commission noted that there were several factors that led to the increase in dispensation for marriage in 2020, namely:

1) The Covid-19 corona virus pandemic caused children not to be able to attend school face-to-face and families experienced economic difficulties.

2) There is a possibility that children are exposed to devices so that they respond more quickly to various information that is not understood, resulting in unwanted pregnancies.

3) Another factor is the unequal distribution of programs related to comprehensive understanding of sexual rights and reproductive health.

4) Finally, there is the misuse of incomplete information in some religions about sexuality.

In addition to the factors mentioned above, there are several reasons commonly used in applying for dispensation for marriage according to Khoiruddin Nasution (2013), namely (1) factors from children: such as children dropping out of school, having marital relations, getting pregnant out of wedlock. (2) Factors from outside the child such as: fear of violating religious teachings/fear of immorality, local customs and culture factors, economic factors (Elsy Maisany, 2018).

Parents want their children to marry the right person of their choice. It is this parental desire that makes matchmaking often happen even at a young age. They do not want their children to choose the wrong partner. Another reason, which says that early marriage is related to the family's fear of daughters becoming spinsters and having premarital sex. Therefore, early marriage is used as a solution to maintain honor. This dispensation for marriage is actually considered a "fruit of simalakama" because changes to the age limit for marriage will seem futile if finally minors can legally marry with a dispensation from the judge. The facts on the ground show that the ambiguity in Article 7 of the Marriage Law also leaves a more serious
problem. As a result, several court institutions have actually been 'flooded' by requests for dispensation submitted by parents of minors who want to get married. In fact, the number is greater than before the amendment to these provisions.

Actually the existence of this marriage dispensation is a violation of Law no. 16 of 2019 which revised the age limit for marriage to 19 years for women and men. In addition, it also violates Law no. 35 of 2014 concerning Amendments to Law no. 23 of 2002 concerning Child Protection, Article 26 paragraph (1) states that guardians are obliged and answerable for nurturing, nurturing, educating and protecting children; develop minors as indicated by their capacities, abilities and interests; forestall kid marriage. It is actually clear that the mandate of the law is aimed at protecting children, it also aims to ensure that children still have their rights to live, develop and create and are shielded from demonstrations of brutality, exploitation and discrimination. This shows that there is a legal loophole in the marriage dispensation even though the conditions have been tightened.

Legislation ideally should be able to become a tool to enforce justice, create comfort and be able to support the creation of the welfare of people's lives. However, if you look at the reality that is happening in society, the legality of underage marriage has had a bad impact on people's lives. People who want to get a dispensation for marriage of minors have dared abuse the existence of statutory regulations in order to smooth their desires.

Changes to the Marriage Law are basically good, but are not in line with the practice in the field. With the goal that the introduction of changes to the law on as far as possible for marriage does not have much impact on reducing the number of early marriages in Indonesia. Likewise, the Court as the last bastion to suppress the number of early marriages also does not have a big impact. Nearly 90% of applications for dispensation for marriage are still granted by the Court. (Rio Satria: 2019)

Marriages carried out by minors or early marriages certainly cause impacts: The impact of education is that children will lose their right to education, psychological impacts, underage couples are not mentally prepared in facing the roles and problems of the household so that there are quarrels, household quarrels, even divorce in addition to children because of the unpreparedness of the child can lead to stress and depression, biological and health impacts, namely the reproductive organs of underage children are not yet ready for sexual intercourse, pregnancy and childbirth. The risk of premature babies being disabled, low weight, etc., the economic impact and the majority of underage children do not have an income so they still depend on their parents so that parents bear a double burden in addition to supporting their own family as well as the new family of their children. This leads to poverty which leads to the divorce of the couple. A; reasons for divorce include: economics, quarrels because young couples are still unstable and their mindset is not yet mature.

The impacts mentioned above will become very complex if underage marriages are allowed to continue.

2. Interpretation of Urgent Reasons in the Context of Best Interests for Children

Article 7 paragraph (2) also adds the phrase "with emergency reasons and sufficient evidence". This addition actually has a good intention, namely to limit the application for dispensation only for certain reasons that are considered urgent and to provide supporting evidence. However, as long as there is no clear explanation, the phrase still gives rise to multiple interpretations, so that the subjectivity of judges with all their legal considerations is very dominant in determining because there are no clear regulations. In addition, the ambiguity of this phrase makes interested parties apply for dispensation for various reasons. That is, the parties, especially the parents of the prospective bride and groom, can easily state an urgent condition for the marriage of the underage bride to be carried out.
This marriage dispensation is actually considered a 'fruit of simalakama' because as if any changes to the arrangement on the age limit for marriage will seems futile if in the end minors can do it legally married with a dispensation from the judge. Facts on the ground shows that the ambiguity in Article 7 of the Marriage Law turns out to be leaving more serious problems. As a result, some judiciary justru 'flooded' dispensation petition filed by the parents of children minors who wish to marry. Even more in number larger than before the amendment to these provisions.

If the Marriage Act to grant the request the dispensation must be based on “Extremely Urgent Reasons”. At PERMA Number 5 of 2019 has the addition of a clause "Best interest for Children"which is detailed in PERMA Number 5 of 2019 in Article 17" namely, the Judge in determining the application for a marriage dispensation considers:

1) Protection and the best interests of children in laws and regulations and unwritten laws in the form of legal values, wisdom local and a feeling of equity that lives in the community; and

2) Conventions and/or international agreements related to child protection. In PERMA, the administrative requirements certificate of health is not an obligation as in the law Marriage. Article 15 states "in examining the child who is being applied for" dispensation for marriage, the Judge may letter (d) "request Recommendation from Psychologist or Doctor/Midwife, Professional Social Worker, Welfare Personnel Social Services Center for Women and Children Protection (P2TP2A), Indonesian/Regional Child Protection Commission (KPAI/KPAD)".

The use of the word "Can" is a form of language allowance so that it is not too much of a concern in fulfilling administrative requirements filing a marriage dispensation application in the Court. Then this is what become a gap for the judge in his consideration to grant the request marriage dispensation. For example, both parents / family can no longer afford it advising and supervising the association of their children who have been in a relationship for a long time love/love relationships, fear of violating religious and social norms, The judge has been able to grant the request considering that by giving Marriage dispensation for both is better for the interests of both children This is to avoid things that will plunge him further in a relationship that is prohibited by religion. Especially for children who have drop out of school, immediately marrying off his child is the best choice for the child. While for parents, marrying off their children is the way best for him. Immediately marrying the child is considered to be happier for his future. So this shows in the Act There are two marriages Number 16 of 2019 and PERMA Number 5 of 2019 different spirit:

a. Elucidation of Article 7 paragraph (3) of the Marriage Law is oriented towards The spirit of preventingmarriage child with moral and religious considerations customs and culture, psychological aspects, health aspects and impacts caused.

b. Article 17 letter (a) PERMA is oriented towards the Spirit of Protection and Best interests of children in laws and regulations and unwritten law in the form of legal values, local wisdom and taste justice in society.

It is to the greatest advantage of the kid that all dynamic should be consistently think about the endurance and advancement of children. Understanding the best interest clause for children will certainly be different. Differences in views can be influenced by understanding, background, customs and culture. It will be different if more put forward the spirit of prevention in the best interests of children, will reduce the number of underage marriages.

3. No Strict Sanctions
The Marriage Law has regulated marriage, but it does not regulate in detail about underage marriage. This creates gaps that lead to violations of children's rights. “Early marriage is a violation of human rights, in this context it is a child. However, law enforcement to take action against this matter is still weak because there are no definite provisions that regulate it,” the Child Protection Act it is stated that guardians are liable for forestalling the event of child marriage. However, not a few parents who do not carry out that role. This happened because there were no strict sanctions against the parties involved until there is an underage marriage. “Both the Marriage Law and the Child Protection Act, there are no sanctions in the event of an underage marriage. It is clear that both the child and the parent in the Child Protection Law are obligated to prevent marriage from occurring, without being charged anything.

Since the United Nations Convention on the Rights of the Child was ratified through Presidential Decree No. 36/1990, Indonesia is bound morally, politically and juridically to protect, respect and fulfill children's rights. This is also confirmed through the Child Protection Law which regulates the obligations and responsibilities of the state, government, community, parents, and families towards children's rights. UU no. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, states that Article 23 paragraph (1) The state, government, and nearby government ensure the insurance, care and government assistance of children by considering the rights and commitments of guardians, watchmen, or different people who are lawfully liable for kids; paragraph (2) The state, government and local governments supervise the implementation of child protection. Furthermore, in Article 26 of Law no. 35 of 2014, states that one of the obligations and responsibilities of guardians is to forestall early marriage in kids. The universe of kids is a world of learning and playing, not a marriage that imposes responsibilities that are not in accordance with their age and level of physical, mental and social maturity (Saraswati, 2015)

Parents who allow their children to marry at an early age in addition to violating the Child Protection Law, the Marriage Law, also violates Article 7 of Law Number 20 of 2003 concerning the National Education System which states that parents of compulsory school age children are obliged to provide basic education. Therefore, every child must complete a minimum of junior high school level education (Junior High School). Also in Law no. 16 of 2019 regarding Article 7 of the Marriage Law states that only those who are 19 years old, both male and female, may marry. In addition, marriage to children is also contrary to Article 28 B paragraph (2) of the 1945 Constitution, which states "Each kids has the privilege to endurance, development, and advancement and has the option to security from brutality and segregation ".

B. Solutions to problems in the implementation of Law no. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage.

The problem is that the age limit for marriage will seem futile if in the end minors can legally marry with a dispensation from the judge. The facts on the ground show that the ambiguity in Article 7 of the Marriage Law also leaves a more serious problem. As a result, several court institutions have actually been 'flooded' by requests for dispensation submitted by parents of minors who want to get married. In fact, the number is greater than before the amendment to these provisions.

1. According to the author, the solutions to these problems are:

   1) The existence of a higher level of application for a marriage dispensation must be handled wisely by the judge by considering all the reasons put forward as well as the possible impacts if a dispensation is granted. The judge in this case must be pro-active in exploring various legal facts
and social realities in the community in the case being handled. Law No. 4 of 2004 concerning Judicial Powers Article 28 paragraph (1) which states: "Judges are obliged to investigate, follow, and comprehend the legitimate qualities and feeling of equity that live in the public eye".

2) In the legislation, there are no specific reasons that allow the existence of a marriage dispensation, so that the decision to allow a marriage dispensation is fully returned to the judge’s legal considerations (legal reasoning) on all existing legal facts. The judge is not merely a mouthpiece laws-laws without regard to social facts that occurred. The occurrence of underage marriages by way of dispensation can be minimized through the seriousness of the judge in examining the petition case. Therefore, the author will provide an explanation related to the regulation of marriage dispensation and marriage dispensation all the problems in Indonesia, especially after the enactment of Law no. 16 of 2019.

3) There is a need for synergies in socialization from the government, authorized officials, village officials, traditional and religious community leaders to instill the concept of norms, rules on changing norms and government regulations that can be recognized and implemented by the community regarding child marriage. This new policy change is likely to require a lot of socialization regarding the changing regulations considering that the main problem of implementation is at a lower level where the goal of this policy change may not reach the community as a whole, especially people in rural areas. In addition to the law, a good implementation of the Child Protection Law is also needed, Article 26 paragraph (1) letter (c) of Law Number 23 of 2002 regarding Protection which explains that among the responsibilities and commitments of guardians to children is preventing child marriage occurs. The dispensation for child marriage also needs to be tightened so that the application of increasing the minimum age of marriage can be effective. Synchronization of regulations from the village level is very necessary to intervene in child marriage by involving formal and non-formal figures through socio-religious and cultural approaches in encouraging regional policies related to the prevention of child marriage.

2. Urgent reasons and best interests of children

Marriage under the time of marriage is a complex issue, so that in considering the application for a marriage dispensation, the Religious Courts and the District Courts must formulate considerations from various perspectives, including syar'i, juridical, sociological, psychological considerations, including health. Legal protection for minors who marry is very important to apply in Law Number 35 of 2014 concerning Child Protection in Article 1 Paragraph (2) which It is pointed out that child protection is all activities aimed at guaranteeing and protecting children and their rights to life, growth and development. Optimal development and participation of human dignity and protection from violence. With The existence of the child protection law guarantees the protection of the rights of a child to obtain his rights as a child.

In the application for dispensation for the age of marriage, the judge prioritizes the principle of legal expediency. From the point of view of the sociology of law, the purpose of law is emphasized in terms of expediency. The principle of the usefulness of the law looks more at humans and not humans exist for the law. Parents who apply for dispensation to the Court are granted by the judge because they are considered to be of greater benefit than not being granted also to the greatest advantage of the kid.

To the greatest advantage of the child, the judge should formulate legal considerations regarding the application for a marriage dispensation based on statutory regulations through strict procedures, unwritten law in the form of legal values, local wisdom, a feeling of equity that lives locally, and international conventions and/or treaties related to child protection.
Judges are not only required to be focused and careful, but also to be selective. PERMA No. 5 of 2019 also regulates in detail the examination procedures that must be taken by judges. In examining the dispensation application, the judge must be able to identify whether the child whose application is really approved and knows the marriage plan so that there is no element of coercion from the parents. Judges must also know for sure the psychological condition, health and readiness of children in marriage and marriage. Court decisions made by judges have a major role in changing behavior and increasing public legal awareness. Although there are still legal loopholes in the regulation of marriage dispensation, but through legal considerations, judges must make wise and fair decisions. in the examination of the case should be heard ketarangan applicant, children, the prospective wives / husbands, and parents / guardians of the prospective husband / wife, and in the trial judge had to give advice to pihakpihak is related to the risk of child marriage. 

judge also tighten case dispensation to marry is to make rules that are limiting on the reasons for filing a case for a dispensation application. The reason that is said to be the most urgent according to the author is the reason that pregnancy out of wedlock is related to the legal status of the child to be born as well as from the social side to minimize social sanctions where usually women who are pregnant without a husband will be humiliated and ostracized by the community which results in psychological pressure that makes them unwilling. hang out and shut up.

According to the author, there is a need for improvements related to Law No. 16 of 2019 concerning Marriage, especially in addition to the existence of written sanctions so that synchronization occurs with the Child Protection Act. The number of cases of child marriages appearing in the community, one of the contributing factors is the absence of strict sanctions for those who violate the law. Although it is clear that the 1945 Constitution Article 28 B paragraph (2) states that each kid has the privilege to endure, develop and create and has the option to security from brutality and separation, and there are as yet many instances of underage marriage occurring. The absence of sanctions for those who violate the law, which is still in effect, makes people not feel guilty for committing underage marriages. Whereas in terms of the Human Rights Law Articles 52 to 66, the event of underage marriage is an infringement right of the minors. In the context of children's rights, it is very clear that what is stated in Article 26 paragraph (1) point C of Law No. 35 of 2014 peruses that guardians are obliged and dependable for prohibiting under age marriage from the perspective of children's rights, the incorporation of this sentence is an unquestionable requirement, which should be a typical concern. This is on the grounds that minors who are compelled to wed at an age that is as yet thought to be a kid from the part of kids' privileges will be denied of their privileges. If viewed from the Criminal Code, a person who marries an underage girl can be sentenced to 4 years in prison for violating Article 28 of the Criminal Code concerning the prohibition of marrying a minor because she is not yet an adult.

CONCLUSION

1. Whereas with the revision of the Marriage Law, it turns out that there are still many problems, namely the existence of marriage dispensation is a form of deviation from the age limit for marriage which should be prohibited. After Law no. 16 of 2019 concerning the addition of the age limit for women to marry 19 years, it turns out that there has been an increase in applications for dispensation from marriage to the court. The absence of a request to apply for marriage does not have strict rules, so almost all requests are granted by the judge. This shows that there are still legal loopholes to make marriage dispensation permits still wide open for any reason. There are also no strict sanctions for violations of underage marriages.
2. There needs to be a rule regarding dispensation which clearly states the principle reasons that can be presented by the gatherings and furthermore which can be conceded by the appointed authority. This is planned to make legitimate assurance and limit the act of underage relationships that happen as a result of the marriage dispensation.

**SUGGESTIONS**

1. Required. synchronization of regulations from the village level to the central level is very necessary. It is necessary to intervene in child marriage involving formal and non-figures formal approaches in encouraging policy areas related to the prevention of child marriage.

2. Judges should consider carefully, not only pay attention to formal aspects, but also aspects of justice in society.

3. It is necessary to strengthen the coordination of stakeholders to tighten the implementation of prevention of child marriage in Indonesia.

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