

The Role of Balinese Indigenous Peoples as Social Control Prevention Impact of Early Marriage

Hervina Puspitosari¹, Teddy Prima Anggriawan², Shinfani Kartika Wardhani³,
Rasha Firmana Albany⁴ .

Faculty of Law, University of Pembangunan Nasional Veteran Jawa Timur.
hervina.ih@upnjatim.ac.id¹, teddyprima.ih@upnjatim.ac.id²

Abstract

All legal events in areas dominated by indigenous communities, of course these communities play a role in social control of community life. The Balinese Indigenous Community has a role as social control, including in terms of early marriage which is currently popular. The urgency of this research is because early marriage must actually be prevented, considering all the negative impacts that arise. The aim of this research is to explore the role of the Balinese Indigenous Community as social control in preventing the impact of early marriage. The research method used is empirical juridical, with a qualitative approach. Data comes from primary data and secondary data. Data collection used in this research was interviews, documentation and literature study. Analysis of legal materials in this research uses analytical descriptive. The results of the research found that the role of the Balinese Traditional Community as social control in preventing the impact of early marriage is that there is a legal umbrella within it established right, so that in this case the role of indigenous communities has legal certainty. The role of indigenous communities in preventing early marriage needs to be carried out in a complex manner and involving many parties to work together to prevent the negative impacts of early marriage.

Keywords: *Legal Certainty, Indigenous Peoples; Early Marriage; Social Control.*

1. Introduction

The legal position of indigenous communities is basically regulated in the Constitution, namely in Article 18B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Indigenous communities are a group of people who are bound by their customary rules as citizens together in an association based on the same place of residence or on the basis of descent.¹ Indigenous communities play a role as social controls on people's lives, which is something to prevent social deviations and encourage people to behave and act in accordance with applicable norms and values.²

Basically, all provinces in Indonesia have indigenous community units that have been around for hundreds of years. Bali is a province with people who firmly maintain their customs.³ The Bali Province area is depicted in the following map:

¹ Ernawati & Baharudin, E. Dinamika Masyarakat Hukum Adat dalam Sistem Ketatanegaraan di Indonesia. *Hukum dan Keadilan*. 2019. [dikutip 2 Februari 2024]; 6 (2), P. 53-67.

² Gunawan, DH. *Perubahan Sosial di Pedesaan Bali (Dualitas, Kebangkitan Adat, dan Demokrasi Lokal)*. Tangerang Selatan: Marjin Kiri; 2014. P. 91.

³ Hastuti, MDM. *Hukum Adat Bali di Tengah Arus Budaya Global dan Modernisasi Pembangunan*. *Jurnal Hukum Lex Generalis*. 2023. [dikuti 2 Februari 2024]; 4 (3), P. 251- 259.



Figure 1 Regional Map of Bali Province

The picture above shows that in Bali Province there are 1493 traditional villages. One of the areas in Bali Province is Denpasar, as shown in the following map:



Figure 2 Map of the Denpasar Area

It is known that the Denpasar region in Bali Province has a large number of indigenous people compared to other regions in Bali Province. The number of traditional villages and traditional banjars in Denpasar is as shown in the following table:

No.	Wilayah	Jumlah Desa Adat	Jumlah Banjar Adat
1.	Denpasar Barat	2	119
2.	Denpasar Selatan	11	93
3.	Denpasar Timur	12	89
4.	Denpasar Utara	10	59
Jumlah		35	360

Tabel 1 Jumlah Desa Adat dan Banjar Adat di Denpasar, Bali.

Sumber: Dinas Pemajuan Masyarakat Adat Provinsi Bali, balisatudata.baliprov.go.id

The Balinese Indigenous Community in the Denpasar Region has a role as social control, including in preventing the impact of early marriage. This is as communicated by Dr. I Nyoman Wiguna, S.H., M.H. as Chair of the Denpasar District Court together with the research team. This court has the authority to handle cases of early marriage.

Marriage is a very sacred issue in life, considering that it is a means of forming and building a family. Marriage is not only related to the civil relationship between

humans and humans, but also concerns the relationship between humans and God.⁴ Article 28 B Paragraph (1) of the 1945 Constitution of the Republic of Indonesia basically regulates that every person has the right to form a family and continue their offspring through a legal marriage. Marriage is actually everyone's right, especially Indonesian citizens. "Marriage according to Article 1 of Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God."

After the amendment to Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage as stated in Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, in the consideration considering letter b it is explained "that marriage at the age of a child has a negative impact on children's growth and development and will result in children's basic rights not being fulfilled, such as the right to protection from violence and discrimination, children's civil rights, health rights, education rights and children's social rights." The marriage permit as mentioned in Article 7 was finally changed regarding the marriage permit which previously read "Marriage is only permitted if the man reaches the age of 19 (nineteen) years and the woman reaches the age of 16 (sixteen) years" to read " Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years.

Problem that will be researched is related to the role of the Balinese Indigenous People who are attached to a structurally based social system based on customs and social caste when faced with the negative impact of early marriage which greatly influences the future of the child itself, so it becomes urgent to explore the role of the Balinese Indigenous Community as social control, prevention of the impact of early marriage.

2. Method

The type of research used is empirical juridical. is legal research regarding the application or implementation of normative legal provisions in action on every particular legal event that occurs in society.⁵ The problem approach used in this research is a qualitative approach. Qualitative research is intended to obtain a good, clear picture and provide as accurate data as possible regarding the matter under study, namely the role of the Balinese traditional community as a social control to prevent the impact of early marriage.⁶

The qualitative approach in this research refers to the legal sociology approach in order to examine how reactions and interactions occur when the norm system works in indigenous communities.⁷ The data obtained comes from primary data and secondary data, which includes primary, secondary and tertiary legal materials. The data collection methods used in this research were interviews, documentation and literature study. The analysis of legal materials in this research uses descriptive analytical analysis, namely analysis that combines the data obtained, then analyzed qualitatively by providing a

⁴ Wasman dan Wardah Nuroniyah, 2011, *Hukum Perkawinan Islam di Indonesia Perbandingan Fiqh dan Hukum Positif*, Yogyakarta: Citra Utama, P. 29

⁵ Sulaiman Tripa, *Diskursus Metode dalam Penelitian Hukum*, Aceh: Bandar Publishing, 2019, P. 70-71.

⁶ Rukajat, A. *Pendekatan Penelitian Kualitatif (Qualitative Research Approach)*. Yogyakarta: Deepublish; 2018. P. 81.

⁷ Aprita, S. *Sosiologi Hukum*. (Jakarta: Kencana, 2021), P. 14.

comprehensive picture of the problem being studied to find solutions to the problem and draw conclusions.⁸

3. Result and Discussion

1) The Role of Balinese Indigenous Peoples in Preventing the Impact of Early Marriage Based on *Ius Constitutum*

The law currently in force in the legal science literature is usually called established right. *Ius Constitutum* itself is a Latin term which means established law. In this description, what is meant by established law is law that applies, that is, it applies in a certain place at a certain time.⁹

Ius Constitutum is a term in law that refers to positive law or law that has been established by the government or legislative institution that applies in a country at a certain time period. This concept is in contrast to *ius constituendum* which refers to laws that should exist or laws that should be implemented, but have not been implemented. In this context, established right is a law that has come into force and is binding on all citizens.¹⁰ Right established can come from various sources, ranging from laws, government regulations, court decisions, to the country's constitution. This law is the main basis for determining the rights and obligations of every individual, legal entity and government in a country.

Positive law, or *ius constitutum*, is concrete and can be applied in real cases. This differentiates it from laws that are theoretical or hypothetical. Thus, established right provide clear guidelines in resolving legal conflicts and upholding justice. When there are changes in societal needs or socio-political developments, established right can experience changes through the legislative process or legal interpretation carried out by the judiciary. This is important to maintain the relevance of law to continually developing social dynamics.

Ius constitutum also includes general principles in law, such as the principles of justice, legal certainty, balance of power, and protection of human rights. These principles are the basis for the formation of positive law that is fair and just. In the context of international law, established right refers to the law that applies at the international level and is binding on countries that are parties to international agreements or conventions. International law has an important role in maintaining peace and cooperation between countries. As a concrete legal basis, established right provide legal certainty for every individual and legal entity in living in society. Thus, positive law becomes an important instrument in maintaining order and justice in a country.

In practice, established right requires effective and independent law enforcement to ensure compliance by all parties with applicable laws. Good law enforcement is also needed so that the public has confidence in the legal system and law enforcement institutions. Overall, established right become a strong foundation in a country's legal system. By respecting and obeying applicable positive laws, every individual can live in a just and civilized society. Therefore, a clear understanding of established right very important in living everyday life.¹¹

⁸ Ani Purwati, *Metode Penelitian Hukum: Teori dan Praktek*, Surabaya: Jakad Media Publishing, 2020, P. 21.

⁹ Sri Warjiyati, *Memahami Dasar Ilmu Hukum: Konsep Dasar Ilmu Hukum*, Jakarta: Prenadamedia Group, 2018, P. 52.

¹⁰ Karim. *Ius Constituendum Pengaturan Penyelesaian Perkara Tindak Pidana Ringan Melalui Restorative Justice*. (Surabaya: Jakad Media Publishing; 2019), P. 13.

¹¹ Sumaryanto AD, SH M. *Ius Constituendum Pembalikan Beban Pembuktian Dan Pengembalian Kerugian Keuangan Negara Dalam Tindak Pidana Korupsi*. Jakad Media Publishing; 2020, P. 23.

The product of legal provisions produced by formal legal sources constitutes a system as a whole. What is meant by system is “orderly combination or arrangement as of particulars, parts or elements into a whole”. In other words, a system is an orderly arrangement of elements that form a unity. In relation to law, these elements are legal provisions which are the product of formal legal sources that apply in social life.¹² The position of a legal provision in society's life depends on the position of that provision in the legal system that applies in society's life.¹²

Ius Constitutum regarding the role of Balinese traditional communities in preventing the impacts of early marriage, including:

- 1) Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning

Marriage This law sets a minimum age limit for marriage, namely 19 years for women and men. The Balinese traditional community can play a role in supporting and complying with this provision and providing understanding to the community about the importance of this age limit.

- 2) Government Regulation Number 47 of 2004 concerning Family Welfare Development

This regulation regulates family development and welfare. Balinese traditional communities can play a role in supporting this policy by providing education and counseling about the impact of early marriage on family welfare.

- 3) Minister of Education and Culture Regulation Number 29 of 2018 concerning Prevention and Management of Early Marriage

This regulation provides guidance on efforts to prevent and overcome early marriage. Balinese indigenous communities can collaborate with government agencies to implement this policy in their communities.

There is established right What can be used as a basis for indigenous communities to play their role in preventing the impact of early marriage is to show that legal certainty has been realized. This brings to mind theory Legal certainty according to Roscoe Pound, which is actually realized by the existence of general rules to make individuals understand what actions they can and cannot do. There are internal settings established right This certainly shows that the Balinese traditional community understands what actions they may or may not carry out.

2) The Role of Balinese Indigenous People in Social Control to Prevent the Negative Impact of Early Marriage

Early marriage basically has a negative impact on several things, which include:

1. Children's Health

Early marriage is often associated with health risks, including complications during pregnancy and childbirth. Girls who marry at a young age are more vulnerable to health problems and maternal death.

2. Education

Early marriage often results in the termination of education for children, especially girls. This reduces their chances of gaining the skills and education needed for a better future.

3. Economic and Social

Early marriage can hinder an individual's economic and social development, as they are often financially and emotionally unprepared to start a family. It can also exacerbate poverty and gender inequality.

¹² Trijono R. Menata Ius Constitutum Menuju Satu Sistem Hukum Nasional. Veritas. 2020;6(2):235-55.

Based on the results of interviews with traditional leaders, Balinese traditional communities play an important role in social control to prevent the negative impacts of early marriage. The following are several roles that the Balinese traditional community can play in this regard:

1. Education and Extension

Indigenous communities can organize educational and counseling activities for community members regarding the dangers and negative impacts of early marriage. This could involve training for both parents and children. Indigenous communities can organize educational activities to increase awareness of the risks and negative impacts of early marriage, such as health, education and child welfare.

2. Local wisdom

Maintain and apply local wisdom that prioritizes cultural values and social norms that support mature adulthood before marriage. This includes promoting the importance of education and self-development before deciding to marry. Indigenous peoples can combine national legal principles with their local wisdom. For example, they can adapt customary rules to support legal regulations that prohibit early marriage. Indigenous communities can strengthen cultural values that support marriage at an adult age and prevent the practice of early marriage.

3. Supervision and Construction

Indigenous communities can be involved in monitoring cases of early marriage and providing appropriate guidance or sanctions. They can use customary mechanisms to ensure that community norms are adhered to. Indigenous communities often have custom-based dispute resolution mechanisms. Customary courts can resolve cases related to early marriage by considering national law, if necessary.

4. The Role of Parents and Traditional Leaders

Parents and traditional leaders can provide good examples and advice to the younger generation regarding the right time to get married and the importance of mental and emotional readiness in a marriage.

5. Community Development Program

Indigenous communities can initiate community development programs that focus on empowering women and children, as well as providing support to families to improve economic and social welfare. By involving local wisdom and existing social structures, Balinese traditional communities can play an effective role in preventing early marriage and protecting the welfare of children and their future. Indigenous peoples can carry out social campaigns within communities to change views that may view early marriage as normal or acceptable. Providing social and economic support for families who may be involved in early marriage, as well as offering alternatives such as access to education and skills training. By integrating legal and social aspects, indigenous communities can play an effective role in preventing the negative impacts of early marriage and promoting the welfare of children and adolescents in their communities.

6. Regional Government Policies and Programs

Local governments often have special policies and programs to prevent early marriage. Balinese traditional communities can be involved in implementing these programs and adapting them to local wisdom. Indigenous communities can play a role in enforcing applicable legal provisions, such as the minimum age limit for marriage as regulated in Law Number 16 of 2019. Indigenous communities can work together with the government and law enforcement agencies to handle cases of early marriage and ensure compliance with existing regulations.

7. Involvement in Deliberations

Village Deliberations and Communication Forums Within the village government structure, Balinese traditional communities can participate in village deliberations and communication forums to discuss issues related to early marriage and find solutions based on local wisdom. By utilizing statutory provisions and collaborating with the government and related institutions, Balinese traditional communities can strengthen their role as social controllers in preventing the impacts of early marriage and ensuring the protection and welfare of children and adolescents in their communities.

4. Conclusion

The role of Balinese traditional communities in preventing the impacts of early marriage is based on established right namely by referring to Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, Government Regulation Number 47 of 2004 concerning the Development of Family Welfare, and Minister of Education and Culture Regulation Number 29 of 2018 concerning the Prevention and Handling of Marriage. Early age. This shows that the role of the Balinese traditional community in preventing the impact of early marriage is to demonstrate the existence of legal certainty. The negative impact of early marriage is that it greatly affects all aspects of a child's life, so the role of indigenous communities in preventing early marriage is that they need to synergize with many things, such as with the government and local indigenous communities.

Acknowledgments

In writing this scientific work, the author would like to thank all those who helped in providing support, especially from the Faculty of Law, and also to the Institute for Research and Community Service (LPPM) of the National Development University "Veteran" East Java.

References

1. Book

- [1] Ani Purwati, *Metode Penelitian Hukum: Teori dan Praktek*, Surabaya: Jakad Media Publishing, 2020.
- [2] Aprita, S. *Sosiologi Hukum*. (Jakarta: Kencana, 2021).
- [3] Ernawati & Baharudin, E. *Dinamika Masyarakat Hukum Adat dalam Sistem Ketatanegaraan di Indonesia*. *Hukum dan Keadilan*. 2019. [dikutip 2 Februari 2024]; 6 (2): 53-67.

2. Journal Article

- [4] H. S. Nalwa, Editor, "Magnetic Nanostructures", *American Scientific Publishers, Los Angeles*, (2003).
- [5] Gunawan, DH. *Perubahan Sosial di Pedesaan Bali (Dualitas, Kebangkitan Adat, dan Demokrasi Lokal)*. Tangerang Selatan: Marjin Kiri; 2014.
- [6] Hastuti, MDM. *Hukum Adat Bali di Tengah Arus Budaya Global dan Modernisasi Pembangunan*. *Jurnal Hukum Lex Generalis*. 2023. [dikuti 2 Februari 2024]; 4 (3): 251-259.
- [7] Karim. *Ius Constituendum Pengaturan Penyelesaian Perkara Tindak Pidana Ringan Melalui Restorative Justice*. (Surabaya: Jakad Media Publishing; 2019).

- [8] *Rukajat, A. Pendekatan Penelitian Kualitatif (Qualitative Research Approach). Yogyakarta: Deepublish; 2018.*
- [9] *Sri Warjiyati, Memahami Dasar Ilmu Hukum: Konsep Dasar Ilmu Hukum, Jakarta: Prenadamedia Group, 2018.*
- [10] *Sulaiman Tripa, Diskursus Metode dalam Penelitian Hukum, Aceh: Bandar Publishing, 2019.*
- [11] *Sumaryanto AD, SH M. Ius Constituendum Pembalikan Beban Pembuktian Dan Pengembalian Kerugian Keuangan Negara Dalam Tindak Pidana Korupsi. Jakad Media Publishing; 2020.*
- [12] *Triyono R. Menata Ius Constitutum Menuju Satu Sistem Hukum Nasional. Veritas. 2020;6(2):235-55.*
- [13] *Wasman dan Wardah Nuroniyah, 2011, Hukum Perkawinan Islam di Indonesia Perbandingan Fiqh dan Hukum Positif, Yogyakarta: Citra Utama.*