

# SOCIO-PSYCHOLOGY ASPECT IN AN ALTERNATIVE REGULATION FOR CONTROLLING THE UNDERAGED MARRIAGE

<sup>1</sup>Kasmudin Harahap ,<sup>2\*</sup>Saiful Anwar Matondang

**ABSTRACT** --*This research sought an alternative regulation of underage married. The sociopsychology aspect of married law concerning with; first is seeking the sociopsychology aspect which related to marriage law that fails to control the rising of marriage among the youth; second is to find a new alternative regulation for underage married problems in some parts of Indonesia. The research used the constructivism paradigm to find the data of problems of youth marriage, analyze case, and to offer a new alternative solution of underage marriage. A legal fact was analyzed with the multi disciplinary contexts. It was applied to a socio-cultural factors of the under aged married issue. Data found that the regulation on the age limit of marriage needs to be revised and reviewed, by revising article 7 paragraph 1 which states 19 years for men and 16 years for women to be 17 years for men and 15 years for women, and there is no need for dispensation against this as mentioned in article 7 paragraph 2 and 3. The offered solution to reduce the age of marriage aims to eliminate the obscurity of the interpretation of the minimum age for marriage, both in positive law, customary law and Islamic law. This study concludes that the constructive paradigm to create a new regulation for reaching the better socio-psychology of newly couples. The regulation of the age of marriage should be changed for a problem resolve of the complexity of legal problems that arise, both for individuals and society, and the state in a broad sense.*

**Keywords**-- *underage marriage; limit of age; social problems; constructive paradigm*

## I. INTRODUCTION

The phenomenon of underage marriage in Indonesia has been taken the attention of various groups; that phenomenon is like the iceberg. It looks a little above, but it plains. Underage marriage is one of the many social problems that occur in various places in Indonesia. A pile of historical pages and now the issue is re-emerging as many cases of underage marriage occur in the community (KBBI. (2019). Kamus Besar Bahasa Indonesia. Retrieved from <https://kbbi.kemdikbud.go.id>. On September 12, 2019. 11:17 AM.

Koro, A. (2012). *Perlindungan Anak di Bawah Umur dalam Perkawinan Usia Muda dan Perkawinan Siri*, Bandung: PT Alumni . Marriage is a social contract and divinity contract in which there is the essence of the union of two persons who are mutually binding themselves in a husband and wife relationship (Maloko, 2012). Cases of underage marriage that occur in Indonesia based on the results of the Riskesdas survey (2015) are still very high, which is as much as 0.2 percent or more than 22,000 women aged 10-14 years in Indonesia are

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<sup>1</sup> Institut Pendidikan dan Keguruan Tapanuli Selatan, Indonesia

<sup>2\*</sup> Universitas Islam Sumatera Utara [saiful.matondang@fkip.uisu.ac.id](mailto:saiful.matondang@fkip.uisu.ac.id)

married, while for women aged 15-19 years are 12, 8 percent ([BKKBN, 2014](#)). The data places Indonesia as the country with the 37th largest number of underage marriages in the world from 158 countries and also places Indonesia as the second-highest country in Southeast Asia ([Soemitro, 1990](#)). The high cases of underage marriage in Indonesia actually tend to occur in rural areas. This is because the people who live in the countryside are still low in knowledge about the dangers of conducting a young marriage. Comparisons obtained for married groups at a young age (age 15-19 years) as much as 5.28% occur in urban areas, and 11.88% occur in rural areas. These underage marriages are mostly carried out on low education women and also from low economic status families ([Hanafi, 2011](#)). The marriage rate of a large child is more specific to girls.

The data from *Girls Not Brides* exposed that the girls are more exposed in the practice of marriage of children compared to boys with a ratio in Indonesia reaching 75: 1. However, for the trend of the prevalence of young marriage at the regional level and its comparison with the national prevalence each year, it is still little known or published ([Dellyana and Simatupang, 2013](#)). The positive legal perspective used in this study aims to analyze the age of marriage fundamentally, comprehensively, and integrally.

This research is intended to analyze the age of marriage in a fundamental, comprehensive, and integral manner based on a positive legal perspective. More specifically, this study aims as follows.

- 1) Analyze and find the principle of marriage arrangements for minors in the perspective of Law No. 1 of 1974 concerning marriage.
- 2) Analyze and find weaknesses in the arrangement of the implementation of marriage for underage children at this time.
- 3) Reconstructing the marriage arrangements of minors as legal protection based on justice.

## II. THEORETICAL REVIEW

Legal theory including the theory of dignified justice is substantive legal theory, or more explicitly, can be seen as the law itself. This theory is equated with legal philosophy and can be equated with the philosophy of law and jurisprudence and substantive law. This written thought corrects the writings of [Prasetyo \(2011\)](#) who wrote that legal science is only one area of law that is not identical with the law, because not every result of research and development in legal science can be a law. All of that turns into law if it is in accordance with justice contained in society. The theory of justice is a rule and principle of positive law in Indonesia as synonymous with justice itself ([Prasetyo, 2011](#)). Soekanto argued law as a behavior or activity of people and institutions, as legal rules and as values of justice referred to as the legal dimension, namely dimensions of value, rules and behavior ([Soekanto, 1983](#)). Value is an idea or idea about something abstract. Values can come from certain philosophies or from a view of life. Values can be in the form of kindness, truth, or vice versa, namely evil, error. In law, values have properties as a necessity and reality (*das sollen* and *das sein*). Goodness is studied in the philosophy of ethics. Requirements contain orders and sanctions because imperative intentions are related to power. Legal values are contained and contained in the rules. These values become the object of study in the philosophy of law ([Prasetyo and Halim, 2011](#)). Ramulyo argued the purpose of marriage is to meet the needs of the physical and spiritual life of humans, to form a family and maintain and continue the offspring in living their

lives in the world and to prevent adultery in order to create peace and tranquility of family and society ([Ramulyo, 2004](#)). In general the purpose of marriage, according to Rafi'udin ([Rafi, 2006](#)) is as follows:

1) Creating a truly happy Muslim family, in addition to creating education in accordance with Islamic teachings.

2) Obtain legitimate offspring, obtain offspring who know 2 (two) parents clearly, and parents who are responsible to their offspring.

3) Avoid humans from the valley who are immoral who are humiliating, such as adultery.

4) Keep the family from the pain of the torment of hell.

5) Maintain eyesight, and others.

Thus the purpose of marriage in Islamic community is to form a happy and eternal family based on the supreme divinity; It recognizes the concepts; the *sakinah*, *mawaddah*, and *rahmah*.

a) *Sakinah* (Arabic -calm down): [KBBI \(2019/ Indonesia Dictionary\)](#) the Arabic word of “sakinah” means peaceful;tranquility of a family. One of the purposes of marriage or marriage is to get a family that is confident. *Sakinah* means calm, in this case someone who is married wants to have a calm and peaceful family. In his interpretation, Al-Alusi said that *sakinah* is to feel inclined towards the couple. This tendency is one thing that is natural because someone will definitely feel inclined towards him. If this tendency is channeled in accordance with Islamic rules, what is achieved is calm and tranquility, because another meaning of *sakinah* is calm. This calm and tranquility is one of the goals of marriage or marriage. Because marriage is an effective means of maintaining purity of heart to avoid adultery.

b) *Mawadah* ((Arabic -affection): [KBBI \(2019/ Indonesia Dictionary\)](#); The purpose of *Rahmah* (Blessed) marriage is to have a sense of affection, related to spiritual matters. Regarding the understanding of *mawaddah* according to Imam Ibn Kathir is *al mahabbah* (love) while *ar rahmah* is *ar-ra'fah* (affection).

c). *Rahmah* ((Arabic -Blessed): [KBBI \(2019\)](#) /(*Indonesian Dictionary*), Arabic word “mawadah” means affectionately and “rahmah/rahmat” means blessed by God. The purpose of the next marriage is to obtain a family that is blessed and blessed. The purpose of *Mawadah's* marriage is to have a family, in which there is a sense of love, relating to things that are physical.

### III. UNDERAGE MARRIAGE

Marriage of a child or better known as underage marriage is one of the many social phenomena that occur in various places in the country, both in urban and rural areas; both middle and upper middle and lower class. Underage marriage is a marriage performed by someone who is underage ([Rizali et al, 2018](#)). In urban areas, 21.75% of children under the age of 16 have been married. In rural areas, the numbers are much larger, namely 47.79%, which shows the simplicity of the mindset of the people so that they ignore many aspects that should be a condition of a marriage. After marriage, a girl in the village has to leave all her activities and only take care of her household, so her husband is required to have more responsibility for having to make a living. Underage marriage partners do not have adequate education and skills to earn income ([Rizali et al, 2018](#)).

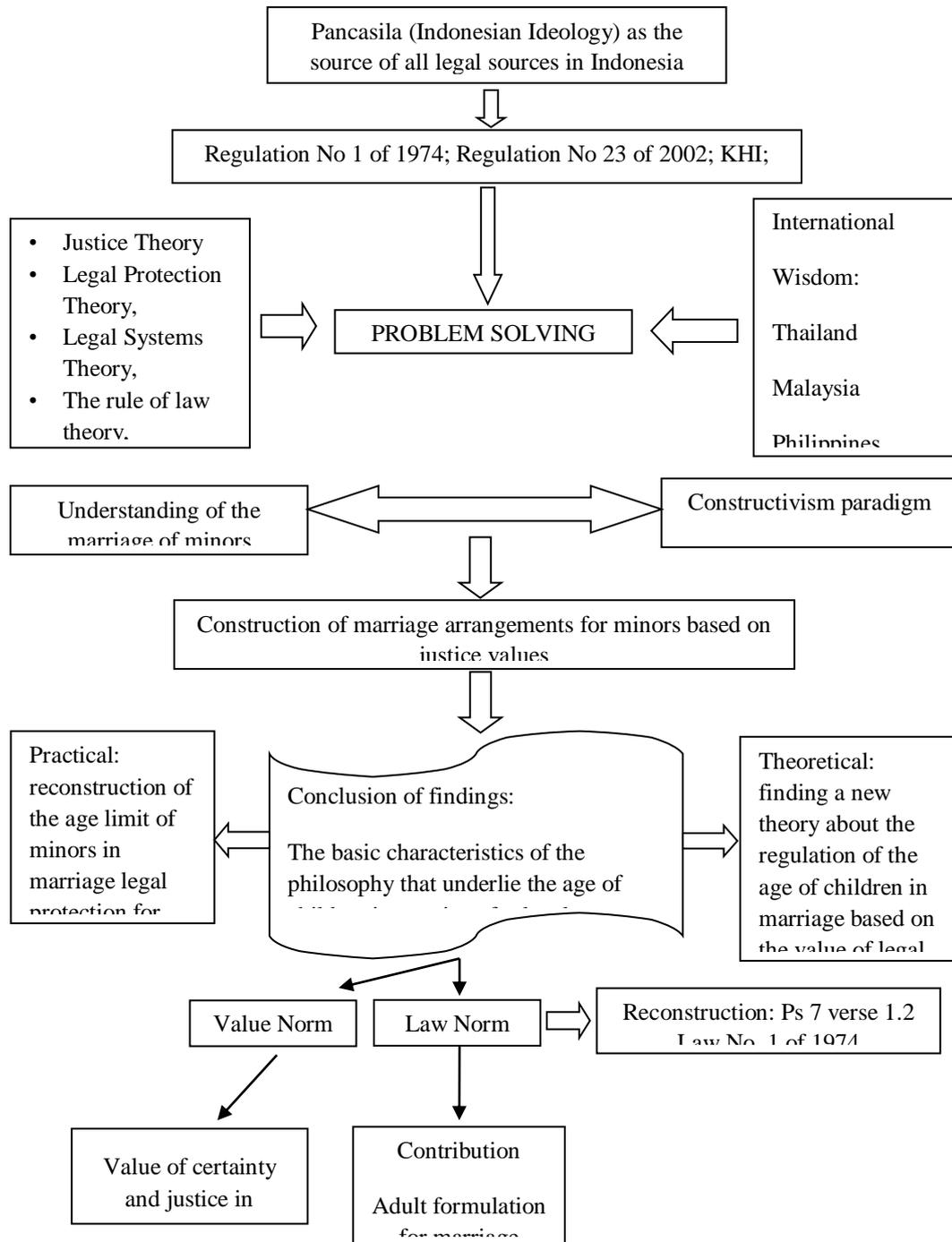
Criminal law also recognizes immature and adult age. The so-called adult age if one is 21 years old or not yet 21 years old, but has or has been married. Child criminal law and the program apply only to those who are

not yet 18 years old, according to civil law not yet mature. 17-year-olds and married are no longer included in juvenile criminal law, while those who are not of age according to article 294 and 295 of the Criminal Code are those who have not yet reached the age of 21 and have not married before. If before the age of 21 the marriage is terminated, he does not return to being "not old enough".

The theory of legal protection is a theory that is reviewed and analyzed about the form or form and purpose of protection, protected legal subjects and protection objects, protected legal subjects and objects of protection provided by law to the subject. This theory was developed by Roscoe Pound, Sudikno Mertokusumo and Antonio Fortin ([Salim, 2013](#)).

The category of legal protection for the people, are namely preventive, repressive and curative damages. In preventive legal protection, the people are given the opportunity to raise objections (*inspraak*) or their opinions before a government decision gets a definitive form. This means that preventive legal protection aims to prevent disputes, whereas conversely repressive protection aims to resolve disputes. While curative protection is given to provide awareness to be aware and willing and able to improve in the future so that it does not happen again. Preventive legal protection is very meaningful for government actions that are based on freedom of action, because with preventive legal protection the government is encouraged to be careful in making decisions based on discretion.

In Indonesia, legal protection for the people due to government legal actions has several possibilities, depending on the legal instruments used by the government when carrying out legal actions. It has been stated that legal instruments commonly used are decisions and provisions. Government legal actions in the form of issuing decisions are government actions that fall under the category of regaling or government actions in the field of legislation. This is because, as mentioned earlier, the decision issued by the government is a statutory regulation.



**Figure 1:** Statutory Regulation (Indonesia Regulation No 1 of 1974; Regulation No 23 of 2002; KHI; KUHP):

Source : Academic draft for legislation process law of Indonesia

## IV. RESEARCH METHOD

### *Design*

The research used the constructivism paradigm. A multi-disciplinary view point was applied to seek the affecting socio-cultural factors and analyze them in social contexts of law ([Hidayat, 2003; Warassih, pp:162](#)). This sociological juridical is to identify and conceptualize the law as a real and functional social institutions. The sociological approach or the empirical approach ([Soemitro, 1983](#)) leads the researchers to find the essence of justice and law order. Underage marriage as the focus of this research deals with Indonesian Law No. 1 of 1974, concerning marriage and about contracts. The constructive law model offers to resolve the underage marriage law; it does not fulfill the values of justice

### *Data Collection Sources*

Data collection techniques was carried out to gather the documents from libraries, Islamic courts, newspapers and internet. The documents which contain the law principles, concepts, teachings and theories of law and justice were used as sources. The 1945 Constitution of the Republic of Indonesia, Law Number 1 of 1974 concerning Marriage, and so forth were collected to help the analysis.

The data sources used in this study are as follows:

1. Primary Data –

Primary data obtained directly from interview of law experts, psychologists, anthropologists and sociologists.

2. Secondary Data:

Secondary data were collected through notes, newspapers, reports, and other sources related to the issuance and trading of bonds in the capital market.

### *Data Analysis*

The analysis was carried out by descriptive-analytical method that analyzed primary and secondary data. Descriptive includes the content and positive legal structure, which is an activity carried out by the author to determine the content or eating of legal rules that are used as a reference in resolving legal issues that are the object of study ([Zainuddin, 2014](#)).

## V. DISCUSSION AND ANALYSIS

Many socio-cultural factors which affect the rising of marriage among the youth in rural areas of Indonesia; the local tradition, Islamic law, economic, and pregnancy factors. The family economic context can be the factor underlying the rampant early marriage at this time in Indonesia. Agricultural people do not wait long to marry off their children, because the sooner they are married, the sooner the girl can be separated from her parents' dependents and be borne by her husband, or it can also help her economy (his parents-in-law). The motives of

parents who marry off young girls is no more than guarantee the sustainability of their economic endeavors, because the marriage of their children at a young age is intended so that later the child and daughter-in-law who have become husband and wife can help sustain the development and business development of both parties.

In traditional Malay society, there is a cultural value and assumption that a man and woman will get mature on their own after they enter the marriage stage, so that if there is a chance, the parents still interfere to mediate the relatives to marry the daughters. This is because at that time the parents will feel embarrassed if their daughter gets late to get a mate or partner. Usually when the girl has reached the age of 16 years and above. If there is also no young man who comes to propose to her, her parents will have begun to feel anxious that her daughter is too old to marry. It will find it difficult to get a mate. At that time there was also a myth: if a girl is quickly married, it would bring fortune to the family concerned. A girl who is no longer attending school when applied by a young man, the woman's parents will not mind to marry her, even though at that time the child is still under 17 years old. That is because the woman's parents consider her family's burden has diminished. In East Java, for example, where most of the economy is centered on the agricultural sector, especially rural communities that have large land to use, they need a lot of energy. Therefore, the community has a need for a large number of children to help them work on the fields. Affecting Socio-Cultural Factors of Teenagers Marriage listed in Table 1.

**Table 1 : Socio-Cultural Factors of Teenagers Marriage**

No	Factors	Permitted age
1.	Local tradition/convention	Under 17
2.	Islamic law	Menstruation age of a girl
3.	Pregnancy	no age limitation
4.	Poverty	Under 17

There needs to be a review of the minimum standard marriage age of 19 years (for men) and 16 years (for women). The analysis referred to here is the consideration of the principle of harm and harm that can be caused by the provision: whether the determination of the age of 19 and 16 years is in accordance with the initial purpose of drafting the law desired by the government or not. Then, we also have to judge: if indeed this provision is good, then it does not mean that it cannot be tried better, considering the historical background of the stipulation of this provision is very complex, and the context at that time was different from now. It is time to reinterpret and reformulate the minimum age requirements for marriage which have been determined in Law No. 1 of 1974. If the standard is sufficiently maintained, then it is sufficiently maintained. But on the contrary, if the results of the study find that (this provision) must be changed, then we should not hesitate to say that the provisions stated in Article 7 paragraph (1) of Law No. 1/1974 it is no longer relevant to the present context, so it requires the authorities to rearrange according to current conditions even for the future. The negative effects of youth marriage in table :2.

**Table 2 : Negative Effects of Teenagers Marriage**

No	Predicators	Effects
1.	Mental readiness	Less responsibility
2.	Law Education	High disputes
3.	No skill	Jobless
4.	Economic Condition	Nutrition and social problems

Marriage Age Maturity (PUP) programmed by the government and also efforts to reject marriage at the age of children carried out by a number of child protection organizations will only become a discourse of endless debate. The solution that must be done by the state in protecting children from the practices of child marriage is by revising Law No. I. 1 of 1974 concerning Marriage and KHI. This support also came from the National Commission on Violence Against Women (*Komnas Perempuan*), together with a number of women's movement organizations, which once submitted a revision to the Marriage Law. Some of the main problems proposed to be revised include; maturation of the age of marriage by reducing the age limit of marriage and still differentiating the minimum age for marriage for women and men ([Sofian and Lubis, 2008](#)).

Law as a means of social engineering is not only understood that law is a tool to 'impose' the will of the government to regulate people. Now this idea expanded: law is a means of renewing society and bureaucracy. Therefore, accordingly the legislation of a country describes us about the regulation, control and supervision carried out by the state to the general public ([Rahardjo, 1981](#)). Law as a social engineering tool is the main feature of the modern state, it is received serious attention after Roscoe Pound introduced it as a special perspective in the legal sociopsychology aspect discipline. Pound ([in Rahardjo](#)) requested that experts focus more on law in actions, and not only as provisions in books (law in books). This can be done not only through laws, government regulations, presidential decrees, but also through court decisions ([Rahardjo, 2000](#)). Law as social engineering must be systematic, starting from identifying problems to solving them, namely ([Rahardjo, 2000](#)):

1. Get to know the problems that are best dealt with. This includes carefully identifying the people who want to be the target of the cultivation.
2. Understanding the values that exist in society. This is important in social engineering that is intended to be applied to the community with multiple life sectors, such as: traditional, modern and planning. At this stage the values of the sector chosen are determined.
3. Make hypotheses and choose which ones are the most feasible.
4. Following the path of applying the law and measuring its effects.

Renewal or terminology reconstruction has various meanings, in national development planning it is often known as reconstruction. Reconstruction means that "re" means renewal while "construction" as explained above means a system or form. Some experts define reconstruction in various interpretations of [Marbun \(1996\)](#) to define simply the rearrangement or depiction of existing materials and rearranged as they are or the original

event (Marbun, B. N. (1996). Kamus Politik. Jakarta: Pustaka Sinar Harapan., whereas according to [Chaplin \(1997\)](#) reconstruction is the interpretation of psychoanalytic data in such a way, to explain the personal development that has occurred, along with the material meaning that is now available to the individual concerned ([Chaplin, 1997](#)).

## VI. CONCLUSIONS

The data analysis gives three conclusions:

(1) Reconstructive paradigm in law study recommends the regulation on the age limit of marriage needs to be revised and reviewed the regulation of marriage by using multi-displines affecting factors to create a new law.

(2) Reconstructive viewpoints offer the solution for youth married problems; it supports the law makers and central government to make minimum age for getting married is 19 years. The regulation of the age of marriage is no longer an endless debate and creates a prolonged polemic. Such debates show the rule of law that is unable to answer the development in society.

(3) With the reconstructive paradigm of the age limit of marriage, legal formulations can be in accordance with the needs, situations and conditions that exist. Changes in the age of marriage will be able to explain and resolve the complexity of legal problems that arise, both for individuals and society, and the State in a broad sense.

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## REFERENCES

1. BKKBN. (2014). Survey demografi dan kesehatan Indonesia (SDKI) 2012. Jakarta: BKKBN. pp:1-24
2. Chaplin, J. P. (1997). Kamus Lengkap Psikologi. Jakarta: Raja Grafndo Persada, pp:421.
3. Dellyana, D., & Simatupang, T. M. (2013). Business model innovation in music industry: a literature review. Abstract of Economic, Finance and Management Outlook, 1, 1-53.
4. Hanafi, Y. (2011). Kontroversi Perkawinan Anak di Bawah Umur. Bandung: Mandar Maju.
5. Hidayat, D. N. (2003). Paradigma dan Metodologi Penelitian Sosial Empirik Klasik, Jakarta: Departemen Ilmu Komunikasi FISIP Universitas Indonesia.
6. KBBI. (2019). Kamus Besar Bahasa Indonesia. Retrieved from <https://kbbi.kemdikbud.go.id>. On September 12, 2019. 11:17 AM.
7. Koro, A. (2012). Perlindungan Anak di Bawah Umur dalam Perkawinan Usia Muda dan Perkawinan Siri, Bandung: PT Alumni
8. Maloko, T. (2012). Dinamika Hukum dalam Perkawinan. Makassar: Alauddin University Press
9. Marbun, B. N. (1996). Kamus Politik. Jakarta: Pustaka Sinar Harapan.
10. Prasetyo, T. (2011). Keadilan Bermartabat Perspektif Teori Hukum. Jakarta: Sinar Grafika

11. Prasetyo, T. & Halim, A. B. (2011). Ilmu Hukum dan Filsafat Hukum Studi Pemikiran Ahli Hukum Sepanjang Zaman, Pustaka Pelajar, Yogyakarta, pp. 9.
12. Rafi, A. B. (2006). Membangun Syurga Rumah Tangga, Surabaya: Gita Media Press
13. Rahardjo, S. (1981). Hukum dalam Perspektif Social. Bandung: Alumni, pp:153.
14. Rahardjo, S. (2000). Ilmu Hukum. Bandung: PT Cipta Aditya Bhakti, pp: 208
15. Ramulyo, M. I. (2004). Hukum Perkawinan Islam Suatu Analisis dari Undang-undang Nomor 1 Tahun 1974 dan Kompilasi Hukum Islam (KHI), 5<sup>th</sup> Edition, Jakarta:PT. Bumi Aksara.
16. Rizali, R., Sarman, M., & Hidayat, T. (2018). Underage Marriage Cases and Their Implications on Economics Stability Households in the District of Kandangan, Hulu Sungai Selatan, Indonesia. European Journal Social Sciences Studies. Volume 3:4, pp. 123:136.
17. Salim. (2013). Penerapan Teori Hukum pada Penelitian Thesis dan Disertasi. Jakarta: Raja Grafindo Persada, pp.3.
18. Soekanto, S. (1981). Pengantar Penelitian Hukum, Jakarta: UI Press
19. Soekanto, S. (1983). Faktor-faktor yang Mempengaruhi Penegakan Hukum, Rajawali, Jakarta, pp.13.
20. Soemitro, I. S. (1990). Aspek Hukum Perlindungan Anak. Jakarta: Bumi Aksara
21. Soemitro, R. H. (1983). Metode Penelitian Hukum, Jakarta: Ghalia
22. Sofian, A. & Lubis, M. (2008). Pernikahan Dini dan Tuntutan Revisi UU Perkawinan. Waspada Online. 21 November 2008, <http://www.waspada.co.id>. Accessed on September 19, 2008.
23. Warassih, E. (without yeat), Metode Penelitian Hukum, Yayasan Dewi Sartika, Semarang, hlm. 162
24. Zainuddin. (2014). Kerangka, Dalil, Teoritis, *Konseptual, dan Metode Penelitian*, Jakarta: Sinar Grafika.