



Child Cohabitation in the Grip of Patriarchy: Between Cultural Normalization and Legal Void

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Abstract:

This study aims to examine the positive legal void in responding to the practice of child cohabitation in Indonesia and analyze the role of the patriarchal system in worsening the weak protection of children, especially girls. Using a juridical-normative method with a qualitative approach, this study examines national laws and regulations, international conventions, and critical legal literature to uncover structural inequalities in regulations. The results of the analysis show that child cohabitation is a form of covert sexual exploitation that has been allowed to take place in the social space without legal certainty due to legal-formalistic views and the dominance of patriarchal cultural norms. The state has failed to carry out its constitutional mandate in guaranteeing children's rights to protection, health, education, and self-development. Therefore, progressive legal reform, based on gender justice and based on the principles of the best interest of the child and maqasid al-shariah is needed as an urgent step to ensure comprehensive and transformative legal protection for Indonesian children.

Keywords: *child cohabitation; patriarchal system; legal protection of children.*

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Introduction

Child cohabitation is the practice of living together between men and women who are not legally married at the age of child, now it is becoming a social phenomenon that is increasingly prominent in various regions of Indonesia. This phenomenon reflects a troubling shift in social norms, in which moral and legal boundaries begin to blur in people's lives. (Simarmata and Mulyasari, 2022) Child cohabitation shows the inability of the positive legal system to provide firm and

adequate legal protection for children who are perpetrators and victims of the practice.

The legal regulation of children is expressly regulated in Law Number 35 of 2014 concerning Child Protection Article 1 number 1 which states that: "a child is expressly defined as a person who is not yet 18 years old". This definition provides a normative basis that every individual in that age range is obliged to receive special protection from the state. (Kusmayadi and Musleh, 2022) This protection is not only physical but also includes protection from social practices that have the potential to damage the psychological, reproductive health, and future of children, including the practice of cohabitation that is rampant without clear regulations.

In reality, child cohabitation tends to escape the reach of the law. There is no explicit provision in the Criminal Code (KUHP), Law Number 1 of 1974 concerning Marriage, or the Child Protection Law that specifically prohibits, regulates, or provides a mechanism for handling cohabitation practices involving children. This gap creates a gray area in the law, where law enforcement officials lose a strong normative footing to prevent and deal with cases of cohabitation that are particularly vulnerable to exploitation of children, especially girls. (Andrie Irawan Vicella Kesya Galuh Iranti, 2025)

This inequality shows that Indonesia's positive legal system is slow to respond to rapidly evolving social dynamics in society. The permissive culture of cohabitation, which in some regions is even considered a form of customary legal pre-marital relationship or as a cheap solution to formal marriage, has preceded the existence of state regulations. When social norms grow faster than legal norms, the law loses its function as a preventive and protective social control, especially in guaranteeing the protection of children from practices that normalize the violation of their human rights.

Sociologically, child cohabitation does not stand alone as an individual phenomenon, but rather is a manifestation of an unequal social structure. Poverty forces many families to see cohabitation as a pragmatic solution, while low sexuality education creates blindness to the biological and legal risks faced by children. (Putri Nurfitriati Iswardani, Budi Radjab, 2016) Most worrying is the strong influence of patriarchal culture that continues to instill the norm that women even from the moment children are destined to submit and serve. Girls are often double victims: as subjects who have no autonomy over their bodies and as the ones who bear the most impact, ranging from unwanted pregnancies, social stigma, dropping out of school, to not having the legal status of the child born.



Unfortunately, all of this is taking place without an adequate legal tool to protect them concretely. (Rohmah, 2024)

The practice of child cohabitation has the potential to violate the principles of children's rights as stipulated in the *Convention on the Rights of the Child* (CRC) which has been ratified by Indonesia through Presidential Decree No. 36 of 1990. Article 19 of the CRC expressly obliges the state to take measures to protect children from all forms of violence, exploitation, and abuse. (Subroto and Hidayat, 2024) However, the reality on the ground shows that many children, especially women, are trapped in the practice of cohabitation without clear legal protections, making them vulnerable to systematic rights violations.

The legal vacuum in Indonesia's positive legal system related to child cohabitation creates serious legal uncertainty. There is no explicit legal norm in the Criminal Code, Law No. 1 of 1974 concerning Marriage, or Law No. 35 of 2014 concerning Child Protection that directly regulates the prohibition or mechanism for handling this practice. (Wowor, B. Y., Paransi, E., & Bawole, 2024) As a result, law enforcement officials have difficulty acting unless the practice of cohabitation is accompanied by real violence or sexual exploitation. This situation causes child protection to be reactive and partial, not preventive as it should be.

Law Number 35 of 2014 concerning Child Protection has actually provided a general framework for child protection, but it does not reach the practice of cohabitation that continues to develop as a social phenomenon. Law No. 16 of 2019, which sets the age limit for marriage to 19 years, has also not been effective in preventing cohabitation, as many people see it as a "middle way" when official marriage is difficult to access. Cohabitation is not just a cultural practice, but has become a hidden form of violation of children's rights, which is socially legalized due to the weak role of the law. (Heryanti, 2021)

Constitutionally, this legal vacuum is contrary to Article 28B paragraph (2) of the 1945 Constitution which states that "every child has the right to survival, growth, and development and is entitled to protection from violence and discrimination." When the state fails to regulate the practice of child cohabitation, it also fails to fulfill its constitutional mandate to protect children as subjects of law. (Ibnu, 2024) This indicates the weak political will of the state in presenting progressive regulations to respond to social changes that put children in a condition prone to exploitation.

Therefore, the urgency to establish regulations that explicitly regulate and prohibit child cohabitation cannot be delayed. This step can be done through the

establishment of a new law or a revision of the Child Protection Law with a more concrete, progressive, and child-justice oriented approach. This criticism of the legal vacuum is not only legalistic but also aims to analyze the role of the patriarchal system in encouraging child cohabitation and the lack of legal protection and criticism of the positive legal vacuum in responding to child cohabitation as a socio-cultural product. Through this study, it is hoped that awareness will emerge that the practice of child cohabitation is not only a moral or customary problem, but a structural problem born from the inequality of gender power relations and the absence of regulations that favor the best interests of children.

Method

This study uses a juridical-normative method with a qualitative approach (Mukti Fajar dan Yulianto Achmad, 2017) which relies on an analysis of laws and regulations and international rules related to child protection. Secondary data were obtained from primary legal sources in the form of laws, international conventions, and secondary legal sources in the form of academic literature, legal journals, and institutional reports related to the issue of child cohabitation. This approach was chosen to critically examine the normative vacuum in Indonesia's positive law and examine the role of the patriarchal system in encouraging child cohabitation and the lack of legal protection and criticism of the void of positive law in responding to child cohabitation as a socio-cultural product. The analysis was carried out in a descriptive-analytical manner to reveal regulatory inequalities and the need for legal reform that ensures justice and comprehensive protection for children, especially in the context of gender power relations and socio-cultural norms.

Discussion

The Influence of the Patriarchal System in Encouraging the Cohabitation of Children

The patriarchal system is a social structure that hierarchically places men as the dominant party in various aspects of life, both in the domestic and public spheres. Girls are subordinated through cultural constructions, social norms, and even legal legitimacy that tend to be gender-biased. This unequal power relationship creates ongoing structural injustices, and directly contributes to the emergence of social practices that are detrimental to women, one of which is child cohabitation.



Child cohabitation refers to the practice of cohabitation between a man and a woman outside of a legal marital bond, carried out by individuals under the age of 18.(Hafrida, H., Haryadi, H., Munandar, T. I., Rakhmawati, D., Aida, 2024) This phenomenon is increasingly prevalent in various regions in Indonesia, especially in communities that are still strongly influenced by patriarchal norms, namely in Bajo Village. In many cases, girls are the most disadvantaged because they do not have an equal bargaining position in the relationship. Gender inequality rooted in patriarchal structures serves as a social legitimacy for the practice of child cohabitation, making it seem culturally acceptable even to the detriment of the weaker.

Anak di definisikan dalam Undang-Undang Nomor 35 Tahun 2014 tentang Child Protection in Article 1 number 1 is every individual who is not yet 18 years old. However, legal protection for children in the context of cohabitation is still very weak and inadequate. The absence of regulations that expressly prohibit cohabitation at a child's age, unless accompanied by physical or sexual violence, reflects a dangerous normative vacuum.(Kurniawan *et al.*, 2024) This void magnifies the potential for exploitation of children, as well as reflects the state's failure to fulfill its constitutional obligation to protect every child from socially, psychologically, and legally harmful practices.

Cohabitation involving children under the age of 18 is often not recognized by society and even by law enforcement officials as a form of covert sexual exploitation. In social practice, this kind of relationship is often labeled as "serious courtship" or "a joint decision between two young people who love each other," without regard to the legal and psychosocial aspects inherent in the child's status. In fact, according to Article 1 number 1 of Law No. 35 of 2014 concerning Child Protection, children are any person who is not yet 18 years old and is still in a developmental phase that requires special protection.(Rahman, Ayub and Ratnawati, 2025) Children in cohabitation situations do not have adequate legal and psychological capacity to give legal consent, as stipulated in the legal doctrine of contract and child protection.

The patriarchal system has a big role in creating a permissive and biased societal perspective on child cohabitation. In many local communities, when a girl is known to live with a man without a marital bond, the social reaction is more often to



blame the girl and her family for being perceived as "failing to maintain honor," rather than condemning the actions of men who engage in illegal relationships with children. This reflects that social norms controlled by patriarchal perspectives still place the moral and social burden entirely on the shoulders of women even though they are underage victims.(B, 2022) Meanwhile, men tend to escape criticism and legal responsibility, creating a space of impunity that strengthens power imbalances. This is certainly contrary to Article 76D of the Child Protection Law which states that everyone is prohibited from committing violence or threatening violence to force children to have sexual intercourse,(Sendratari, 2020) which in broad interpretation can include structural and cultural pressures that are not physically visible.

Biased social assessments of girls in cohabitation practices create a normalizing effect on sexual exploitation. In communities with low levels of education and limited access to legal information, child cohabitation is even considered a common occurrence or an undesirable solution to pregnancy, when in fact it is a serious violation of children's rights. This phenomenon shows the failure of the state in carrying out its constitutional mandate to protect children as affirmed in Article 28B paragraph (2) of the 1945 Constitution (Dina Pungkas, Amir Junaidi, Femmy Silaswaty Faried, 2024) which states that every child has the right to survival, growth and development, and protection from violence and discrimination. When this covert exploitation is not dealt with legally, the state is allowing the perpetuation of gender inequality and violence against children to take place systemically.

The provisions in the criminal law, especially Articles 81 and 82 of Law Number 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 into Law on Amendments to Law Number 23 of 2002 concerning Child Protection, explicitly regulate the prohibition and criminal threat of perpetrators of sexual crimes against children. However, this norm has not reached the practice of child cohabitation if there is no evidence of physical violence or direct coercion.(Danardana and Setyawan, 2022) The unequal power relations between girls and adult men or fellow children that are psychologically and socially unequal, cohabitation remains a form of hidden exploitation that harms and deprives children of their rights. The neglect of the dimension of power in cohabitation relations reflects

the limitations of Indonesian criminal law in understanding gender-based violence structurally, and shows weakness in responding to invisible but destructive forms of exploitation.(Astuti, 2023) The law should not only require proof of physical violence, but also recognize the existence of social pressure and relational imbalances as actionable forms of covert violence.

Indonesia's positive legal system has not yet had a specific regulation that expressly prohibits or regulates the cohabitation of children outside of the marital bond, although its sociological and psychological impact on children is very significant. This void of norms shows how patriarchal cultural dominance still influences the legislative process where the issue of sexual exploitation of children in the form of cohabitation is not considered a priority for legal protection.(Kurniawan *et al.*, 2024) Conservative views that attribute the honor, virginity, and morality of girls solely as the responsibility of the family, not the state, are an obstacle to presenting progressive regulations based on children's rights.(Khotimah and Ula, 2023) The state should be present as the main protector against all forms of violence against children, including symbolic and structural violence experienced by girls in cohabitation relationships. When the law is passive towards non-physical violence in cohabitation relationships, the state indirectly contributes to gender injustice and allows child exploitation to continue without adequate protection.(Ulya, 2017)

The assumption that girls' virginity and morality are solely the responsibility of the family, especially the parents, reflects the legacy of patriarchal thinking that is still firmly rooted in the social construction of Indonesian society. The state, in this case, shows a negligent and passive attitude towards the forms of symbolic and structural violence experienced by girls, especially in the context of cohabitation. Symbolic violence in the form of social judgment, disproportionate moral burden, and loss of women's body autonomy in sexual and reproductive decision-making are not considered serious violations of children's rights.(Arum Kholifatul Alyyah, 2024) In fact, from the perspective of human rights law and child protection, the state has a positive obligation to prevent all forms of violence, including violence that is invisible but has a systemic impact.(Siswanto and Purwaningsih, 2017) Neglect of child cohabitation without strict legal intervention is a form of neglect of the state's

responsibility in guaranteeing children's rights to a sense of security and protection from discrimination, as affirmed in Article 28B paragraph (2) of the 1945 Constitution.(Siswanto and Purwaningsih, 2017)

The impact of cohabitation on girls is very serious and long-term, especially in the aspects of education and reproductive health. Girls who are involved in cohabitation relationships generally drop out of school due to social stigma, family pressure, and unwanted pregnancy conditions. When access to education is lost, girls' futures become vulnerable to poverty and economic dependence, which further reinforces the cycle of gender inequality.(Jamir and Layuk, 2022) In terms of health, girls in cohabitation do not have sufficient access to safe and child-friendly reproductive health services, and often do not understand their rights to the body and legal protections.(Lestyoningsih, 2018) This condition shows a systemic failure in fulfilling the basic rights of children as guaranteed in Law Number 35 of 2014 concerning Child Protection, especially related to the right to health, education, and full self-development without the threat of exploitation.

Instead of obtaining legal protection and restoration of rights, girls who have been involved in cohabitation are often forced into early marriage as a solution to "restore" family honor. This kind of practice is not only contrary to the principle of child protection, but also violates positive legal provisions, namely Article 7 paragraph (1) of Law Number 16 of 2019 which stipulates that the minimum age of marriage is 19 years for men and women.(Rabiatul Adawiyah, Asasriwarni, 2021) Marrying children as a way out of cohabitation is a form of normalization of gender- and age-based violence, as well as prolonging the cycle of injustice that befalls girls. The state, through its permissive attitude towards this practice, indirectly acts as a facilitator of violations of children's rights, not as a protector.(Hastomo, 2023) The state should not turn a blind eye to the fact that forced child marriage is a serious violation of the child's right to freedom, education, and a decent future development.

In Islamic law the practice of child cohabitation is also contrary to the principles of Maqasid al-Shariah, which places the protection of soul (hifz al-nafs), honor (hifz al-'ird), and offspring (hifz al-nasl) as the primary goal of the law. Cohabitation in children directly undermines the honor of girls, puts them at risk of

health and safety, and has the potential to lead to pregnancies that are not recognized by the law, which can disrupt the lineage and legal status of the child born.(Erik Wibowo, 2025) Therefore, child cohabitation should not only be interpreted as a violation of morals or customs, but as a failure of the state to fulfill the constitutional mandate and sharia obligations in safeguarding the welfare of the people. The state must reaffirm its commitment to child protection through strict law enforcement, continuous public education, and comprehensive legal reform with a gender perspective and children's rights as a whole.

The lack of legal protection for children in the context of cohabitation shows the weakness of gender sensitivity in public policy formulation in Indonesia. The legal regulations that have been developed tend to be pseudo-gender-neutral, that is, they appear non-discriminatory on paper, but in their application they ignore the structural inequality that girls are actually faced.(Sofiani, Mufika and Mufaro'ah, 2020) In fact, in the feminist approach of law, the power relations between the parties involved, especially in situations of cohabitation between girls and boys who are more socially or age-dominant, are an important variable in determining whether a relationship can be said to be equal and the consent given is legally and morally valid.(Sitanggang, Labora and Br, 2024) By not acknowledging this inequality, the legal system indirectly ignores the sexual exploitation hidden behind seemingly "voluntary" relationships.

- 1) Legal reforms that favor children and gender justice must be based on the principles of non-discrimination and active participation of children as mandated in the Convention on the Rights of the Child (CRC), which Indonesia has ratified through Presidential Decree No. 36 of 1990. As long as the patriarchal system remains used as the dominant value framework in society and legal policies for the protection of girls will continue to be limited and discriminatory. Therefore, the elimination of the practice of child cohabitation cannot stand alone, but must be accompanied by a larger agenda: the dismantling of patriarchal structures through legal, cultural, and educational transformation. Child cohabitation is not just a moral or customary problem, but a real manifestation of structural violence due to the



unjust domination of the social system. The law should be an instrument of liberation and protection of human rights, not a tool to perpetuate inequality. Deep, comprehensive, and gender-sensitive legal reform is an absolute requirement to ensure an equal, safe, and dignified future for children.

Legal Void in Responding to Child Cohabitation as a Socio-Cultural Product

Child cohabitation, which is the practice of living together between children under the age of 18 and an opposite-sex couple outside a legal marriage bond, is a social phenomenon that is increasingly prominent in various regions in Indonesia.(Putri, 2022) This phenomenon is not solely rooted in individual choice, but is the result of socio-cultural structures that influence people's perceptions of gender relations, sexuality, and family roles.(Chumairoh, 2021) Ironically, although child cohabitation has the potential to violate the basic rights of children, this practice is often not covered by law because it is seen as a "personal matter" or a mere "customary matter".

In practice, the state tends to take a neutral or even passive position towards social practices that are detrimental to children, including cohabitation. This neutrality is rooted in a legal-formalistic view that ignores the social context in which the law works.(Maulana, 2024) In fact, in a progressive approach to child protection law, the state is obliged to actively prevent and deal with forms of violence and exploitation of children, both visible and hidden in social norms.(Rumahlatu, 2025)

The absence of positive legal norms in responding to child cohabitation reflects the failure of the state in carrying out its constitutional obligations. Article 28B paragraph (2) of the 1945 Constitution expressly states that "Every child has the right to survival, growth, and development and is entitled to protection from violence and discrimination."(Ana Wahyuningtyas, 2023) Cohabitation, in many cases, puts children, especially girls, in a vulnerable position to sexual exploitation, symbolic violence, unwanted pregnancies, and violations of reproductive rights.(Sari, 2022) From a criminal law perspective, Articles 81 and 82 of Law Number 17 of 2016 concerning Child Protection only regulate sexual crimes against children that can be explicitly proven, such as rape and obscene acts.(Firdaus and Patty, 2022) However,

not all child cohabitation can be criminally processed if there is no real element of physical violence or coercion. Thus, many practices of child cohabitation escape the reach of the law, even though they substantively involve clear and dangerous power relations inequality.

This situation shows the limitations of a positive legal system that relies too much on the element of physical violence as a condition for prosecution. In feminist studies of law, the unequal power relations between men and women, especially when one is still a child, must be recognized as a form of structural violence that eliminates the possibility of legal consent).(Sendratari, 2020) This means that the cohabitation of children cannot be claimed as a result of free agreement, because the child does not yet have full legal capacity. Law Number 35 of 2014 concerning Child Protection stipulates that children have the right to protection from sexual abuse, exploitation, and other mistreatment. However, until now there has been no implementing regulation that specifically regulates child cohabitation as a form of unconventional exploitation.(Putri and Hariyanto, 2023) As a result, the handling of cases of child cohabitation is highly dependent on the interpretation of local authorities and social norms, which tend to be permissive.

The dominance of patriarchal culture in society exacerbates this legal vacuum. Girls involved in cohabitation are often blamed, considered to be damaging to the family's reputation, and forced into early marriage as a form of "problem-solving." The state is not present to protect children from this social pressure, instead allowing patriarchal norms to take over the legal space and public policy.(Apriliandra and Krisnani, 2021) The practice of marrying children as a way out of cohabitation is in direct contradiction to Article 7 paragraph (1) of Law Number 16 of 2019 which regulates the minimum age of marriage is 19 years old.(Judiasih, 2023) However, the legal loophole in the form of marriage dispensation is actually widely used to legitimize the practice of cohabitation and premarital sexual relations that should be qualified as a violation of children's rights.

When the state allows cohabitation and facilitates child marriage as a solution, the state fails to fulfill the principle of *the best interests of the child* as stipulated in Article 3 of the Convention on the Rights of the Child (CRC), which has been ratified

by Indonesia through Presidential Decree No. 36 of 1990. The state should put the best interests of the child as the main consideration in every policy, including in responding to social practices that harm children. (Laurensius Arliman S, 2017) The void of positive law in regulating child cohabitation is not only a technical issue of legislation, but a reflection of the state's ideological failure in building a legal system that is responsive to children's vulnerability and gender justice. Without the courage of the state to reject the dominance of social norms that are detrimental to children, the law will only become a passive and repressive tool.

It is important to emphasize that the state should not be neutral against social practices that undermine children's rights. Child cohabitation is a form of social violence that requires strict regulation and a children's rights-based approach. Neutrality in this case is not an objective attitude, but a form of tolerance for violations of the constitutional rights of Indonesian children. Criticism of this legal vacuum also involves the role of state institutions such as the Indonesian Child Protection Commission (KPAI) and Komnas Perempuan. These institutions need to be more progressive in encouraging the birth of legal norms that not only protect children from physical violence, but also from structural and cultural violence reproduced through cohabitation.

Legal reform must start from the recognition that child cohabitation is a form of covert sexual exploitation. Therefore, a new norm is needed that clarifies that relationships involving children in the form of cohabitation without marital ties are included in the category of exploitation, regardless of the presence or absence of physical violence. The new regulations should also include prevention and recovery mechanisms. Prevention can be done through sexual and legal education based on human rights and gender equality. Rehabilitation should provide access to legal, psychological, and reproductive health services for children affected by cohabitation. (Fadilah, 2020)

In addition to national regulations, the role of local governments is also important. Local governments should be mandated to draft local regulations that adapt to local socio-cultural characteristics, but still based on the principles of non-discrimination and protection of children's rights. This effort must be carried out

through cross-sector coordination, including education, health, and police offices. Child cohabitation must also be included as an indicator in the measurement of the child protection index at the national and regional levels. Without clear data and recognition, these practices will continue to operate in dark space, and the state will have no moral or legal legitimacy to intervene. (Istiqomah, 2022)

Within the framework of Maqasid al-Shariah, the cohabitation of children is clearly contrary to the principles of *hifz al-nafs* (protection of the soul), *hifz al-'ird* (protection of honor), and *hifz al-nasl* (protection of offspring). (Sofyan, 2024) Therefore, both from the point of view of positive law and Islamic law, the state has the legitimacy and moral obligation to prohibit and abolish this practice. Critical and gender-based legal education should be part of the formal and non-formal curriculum, especially for adolescents and rural communities. This education will equip children and families with knowledge about the rights, laws, and risks of cohabitation, and empower them to reject practices that endanger the future

Ultimately, the elimination of child cohabitation cannot be done through a purely moral approach but requires a systematic and holistic legal and policy strategy. The state must integrate legal, social, cultural, and educational aspects within a framework of progressive and victim-friendly child protection policies. Therefore, child cohabitation is not only a form of social deviation, but a manifestation of the legal vacuum and power imbalance in a patriarchal society. The state cannot continue to hide behind the neutrality of local laws or cultural customs. It takes political courage and moral will to make the law a just, equal, and transformative protection tool for all Indonesian children.

Conclusion

Child cohabitation is a form of hidden exploitation that threatens the legal, social, and moral integrity of the nation. This phenomenon cannot be seen as a purely cultural practice or private affair, but rather as a serious violation of the constitutional rights of the child that reflects the state's failure to carry out its protection mandate. The vacuum of positive legal norms, the dominance of patriarchal cultures, and the lack of a gender justice-based approach have allowed

this practice to take place in gray space without decisive intervention. Therefore, the state has not only legitimacy, but also legal and moral obligations to eliminate child cohabitation through progressive regulations, fair law enforcement, critical legal education, and multi-sector synergy at the central and regional levels. Legal reform must be designed within the framework of intact child protection, oriented to the principles of the best interest of the child, *maqasid al-shariah*, and the values of equality. Without concrete steps and political courage to act, the law will only become a symbol without real partiality towards the future of Indonesia's children.

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