


Protection of Children's Rights: A Review of Child Marriage Policies in Indonesia, Malaysia, and India

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Abstract

Introduction: Child marriage is a phenomenon that continues and develops, the low knowledge and understanding of the community towards the perception of marriage. Child marriage should not be allowed anywhere in the world as it is a practice that violates general human rights and discriminates against women.

Purposes of the Research: In this research, the author will compare the prevention of child marriage in Indonesia, Malaysia, and India.

Methods of Research: This research uses a normative juridical approach method. Researchers will study and examine the factors that cause child marriage and its legal protection to prevent child protection in Indonesia, Malaysia, and India. This research uses descriptive analytical research specifications by determining the laws and regulations relating to legal theories that are the object of research.

Results of the Research: Indonesia increased the minimum marriage age for both sexes from 18 to 19 with the enactment of Law No. 16 of 2019. Malaysia, meanwhile, sets a maximum marriage age of eighteen. Initiatives to reduce the legal age of marriage, especially for women, have been made in both nations for socio-political and socio-cultural reasons. Alongside these initiatives, India has also ratified several conventions designed to end child marriage. These include the 1976 International Covenant on Civil and Political Rights (ICCPR) and the 1976 International Covenant on Economic, Social, and Cultural Rights (ICESCR), as well as the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

Keywords: Child Marriage; Indonesia; India; Malaysia.

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INTRODUCTION

Child marriage is an ongoing and growing phenomenon, the poor knowledge and public understanding of the perception of childhood marriage leads to the child suffering a profound trauma due to the numerous inhibitory factors resulting from marriage, such as, reproductive failure, disrupted health, and the occurrence of violence in the household because the child is not ready for the stairs.¹ For the children to be protected from the marriage of children, it is good for the parents to observe the conditions of marriage. Child marriage has increased dramatically over the past few years, driven by social and economic pressures and concerns about the safety of girls. The author will analyze the forms of legal

¹ Fransiska Novita Eleanora and Andang Sari, "Pernikahan Anak Usia Dini Ditinjau Dari Perspektif Perlindungan Anak," *Progresif: Jurnal Hukum* 14, no. 1 (2020): 50-63, <https://doi.org/10.33019/progresif.v14i1.1485>.

protection established by several countries regarding child marriage. In this study, the countries with the highest child marriage are Indonesia, Malaysia and India.

Child marriage should not be permitted anywhere in the world since it is a practice that violates human rights generally and discriminates against females.² Girls are more likely than boys to marry as children, so the effects of child marriage are felt disproportionately and negatively.³ Although in general a child has the right to the education required for personal growth, adult preparation, and future contributions to the welfare of the family and community, early and forced marriages can negatively impact education, psychological, and health.⁴ Marriages that occur underage or at a young age frequently result in issues that are occasionally irreversible.

A youngster who is married will be regarded as competent even though he has not yet achieved adulthood due to his marriage. After getting married, a child is no longer under the protection and guidance of his parents, thus he or she needs to be ready to take on any legal ramifications from their legal decisions. In the meantime, the child may not fully comprehend the legal parts of society or be prepared to deal with all the fallout from these legal activities. Child marriage can jeopardize young women's lives and reproductive health, particularly for women.⁵ Even though the age limit for maintaining a marriage is important, there aren't many laws that provide an exception or dispensation to it. It is commonly recognized that custom, culture, religion, and the social milieu of the community all have a significant influence on the laws that are currently in effect in Indonesia. Due to the traditional background and customs of the Indonesian people, the diversity of local laws and customs that govern Indonesian society has a significant impact on the country's marriage laws. Every kind of custom has its own set of laws and customs, including those pertaining to marriage and the age at which a couple may get married.⁶

Child marriages not only take away the joys of childhood, but they also bring with them the burden of social, psychological, and reproductive harm. It not only affects the female child but also has effects on the male child. The burden of raising and supporting a family at a younger age exerts extra mental and psychological trauma among boys. This in turn increases the incidence of domestic violence among couples. It is a well-known fact that child marriages are more common in low-income households in rural areas and, at times, are contracted to settle family disputes. In rural areas, these child marriages are seen as a stop-gap arrangement for premarital sex, unwanted pregnancies, and sexual assault.⁷ These adolescent girls are married to elderly men, invoking mental disparity and psychological trauma. There is also an increased prevalence of domestic violence and wife beatings in this age group. The vertical transmission of this attitude has also been observed in studies. This

² Sonny Dewi Judiasih, *Perkawinan Bawah Umur Di Indonesia* (Bandung: Refika Aditama, 2018).

³ G. K. Lilian et al., "Early and Forced Child Marriage on Girls' Education, in Migori County, Kenya: Constraints, Prospects and Policy," *World Journal of Education* 5, no. 4 (2015): 72-80.

⁴ S. Naveed and K. M. Butt, "Causes and Consequences of Child Marriages in South Asia: Pakistan's Perspective," *A Research Journal of South Asian Studies* 30, no. 2 (2015): 161-175.

⁵ K. G. Santhya, "Early Marriage and Sexual and Reproductive Health Vulnerabilities of Young Women: A Synthesis of Recent Evidence from Developing Countries," *Current Opinion in Obstetrics and Gynecology* 2, no. 35 (2011): 334- 339, <https://doi.org//doi.org/10.1097/gco.0b013e32834a93d2>.

⁶ Sonny Dewi Judiasih, "Sustainable Development Goals and Elimination of Children's Marriage Practice in Indonesia," *Jurnal Notariil* 4, no. 1 (2019): 52-64, <http://dx.doi.org/10.22225/jn.3.2.846.75-87>.

⁷ Nazli Hossain, "Child Marriages," *Journal of the Pakistan Medical Association* 73, no. 9 (2023): 1-5, <https://doi.org/10.47391/JPMA.23-62>.

basic violation of human rights is transferred from mothers to daughters as normal behavior.⁸

Child marriage has been widely recognized as a violation of human rights and can hinder the development process of a country. This practice also damages the physical and mental health of children in the long term. According to the World Health Organization (WHO) report, the percentage of girls who marry before the age of 18 in South Asia is the highest in the world, reaching 47%. This means that almost half of the women in South Asia get married before the age of 18. Meanwhile, Indonesia ranks second in ASEAN and eighth globally for child marriage cases. It is known that about 22 out of 34 provinces in the country have higher rates of child marriage than the national average. This is considered alarming. The government has clearly set the minimum marriage age to 19 and tightened the rules for marriage dispensations in the Marriage Law.

Looking at child marriage data from the National Socioeconomic Survey (SUSENAS) by BPS, the number of child marriages in Indonesia is quite high, reaching 1.2 million incidents. Of this total, the proportion of women aged 20-24 who were married before the age of 18 is 11.21% of the total number of children. This means that about 1 out of 9 women aged 20-24 get married as children. This number contrasts sharply with men, where 1 out of 100 men aged 20-24 get married as children. "Based on data from the United Nations Children's Fund (UNICEF) in 2023, Indonesia ranks fourth in global child marriages with a total of 25.53 million cases. The impact of child marriage is multi-sectoral, requiring joint commitment and cross-sectoral collaboration between Ministries/Agencies (K/L) to prevent it.

Another Asian country with a very high rate of child marriage is India, where child marriage is considered a common occurrence. Almost all regions have girls who are married before the age of 18. More than 40% of child marriages occur in India. The issue of child marriage has garnered attention from international organizations, notably UNICEF.⁹ In India, child marriage is considered a common occurrence. Almost all regions have girls who are married before the age of 18. More than 40% of child marriages occur in India. Child marriage has become a cultural norm in India since the Middle Ages when politics were unstable, and laws were not regulated at the national level. Absolute power was held by the monarchy. The ruthless Saracen rule that governed the entire Indian region in the Middle Ages was a source of threat. Therefore, parents abandoned their responsibility towards their daughters by marrying them off early.¹⁰

According to the United Nations International Children's Emergency Fund (UNICEF) Malaysia, child marriage is defined as any formal marriage or informal union in which the spouses live together as if married among children at the age of 18 years and below with an adult or another child. This is a worldwide phenomenon that affects the lives of millions of children every year, as well as Malaysia. Between 2007 and 2017, nearly 15,000 cases of child marriage were reported in Malaysia, with child marriage occurring in all areas across the country. However, as of 2018, it is estimated that there are at least 1,500 child marriages every year in Malaysia. 1 in 5 young women aged around 20 to 24 get married before the

⁸ Kanwal Aslam S, Zaheer S, and Shafique K., "Is Spousal Violence Being Vertically Transmitted Through Victims?," *Findings from the Pakistan Demographic and Health Survey 13* (2015): 10-15.

⁹ "Child Marriage in Southern Asia," n.d., <http://reliefweb.int/report/afghanistan/child-marriages-southern-asia---policy-options-action>.

¹⁰ Asmarita, "Peran Unicef Dalam Menangani Kasus Pernikahan Anak Di Bawah Umur Di India," *Jom Fisip 2*, no. 2 (2015): 471-85, <https://www.childlineindia.org/a/issues/child-marriage>.

age of 18, compared to 1 in 30 young men. There are approximately 12 million girls under the age of 18 who are married each year which is equivalent to 23 girls for every minute. Usually, child marriage occurs in rural and urban areas across all states in Malaysia in all ethnic and religious communities. Both boy and girl are affected by the issue of child marriage in Malaysia. However, the impact on girls is greater where 90% of girls are said to be married at a young age in 2018.¹¹

There have been many studies examining children's rights, including research conducted by Hadibah Zachra Wadjo, who investigated child sentencing from the perspective of restorative justice in the newly enacted Criminal Code Law system.¹² Next study : Lucia Ch. O. Tahamata. This study to determine examine low the right to be life of unborn children outside of marriage are legitimate¹³. The next study is by Lucia Charlotta Octovina Tahamata, who examined legal protection for child laborers in a study of the provisions of the United Nations Convention on the Rights of the Child.¹⁴, And finally, there is a study by Edi Yuhermansyah and Mohd Hakim Bin Mohd Akhir, which examined the determination of the marriage age in the Marriage Laws of Malaysia, as well as the legal status and consequences of underage child marriages without the approval of the Lower Sharia Court¹⁵. The above research is certainly very different from the researcher's. As for the updates in this study, the author will compare the legal protections to prevent child marriage in Indonesia, Malaysia, and India. The author will also analyze the factors causing child marriage in Indonesia, Malaysia, and India.

METHODS OF THE RESEARCH

This research uses a normative juridical approach method. This method examines legal problems including research on legal principles, legal systematics, and legal synchronization. The normative juridical research method is carried out by examining library materials and secondary data.¹⁶ Researchers will study and examine the factors that cause child marriage and its legal protection to prevent child protection in Indonesia, Malaysia, and India. This research uses descriptive analytical research specifications by determining the laws and regulations relating to legal theories that are the object of research.¹⁷ That is, analyzing the implementation of the law in several countries that are related to the object of research, namely regarding the prevention of child marriage.

RESULTS AND DISCUSSION

A. Forms of Legal Protection for Children's Rights

Every country has diverse policies and regulations. Policies are tailored to the local conditions and resources. This is because policies are implemented to regulate the lives of the population and the conditions of the region to create prosperity and peace. Within

¹¹ Muhamad Zuhaili Bin Saiman and Fatimah Azami Binti Mahadzir, "Causes and Negative Effects of Child Marriage in Malaysia: A Case Study," *International Journal of Asian Social Science* 13, no. 4 (n.d.): 122-32, <https://doi.org/10.55493/5007.v13i4.4789>.

¹² Hadibah Zachra Wadjo, "Pemidanaan Anak Dalam Perspektif Keadilan Restoratif," *SASI* 21, no. 2 (2016): 79-90.

¹³ Lucia Charlotta Octovina Tahamata, "Hak Hidup Anak Dalam Kandungan Di Luar Perkawinan Yang Sah Dalam Pandangan Hak Asasi Manusia," *SASI* 2, no. 2 (20015): 57-65.

¹⁴ Lucia Charlotta Octovina Tahamata, "Perlindungan Hukum Terhadap Pekerja Anak, Kajian Ketentuan United Nations Convention on The Right of The Child," *SASI* 24, no. 1 (n.d.): 40-46, <https://doi.org/10.47268/sasi.v24i1.117>.

¹⁵ Edi Yuhermansyah and Mohd Hakim Bin Mohd Akhir, "Implementasi Batas Umur Pernikahan (Studi Kasus Di Mahkamah Rendah Syari'ah Bukit Mertajam Pulau Pinang)," *Samarah* 2, no. 2 (n.d.): 486-501, <http://dx.doi.org/10.22373/sjhk.v2i2.4749>.

¹⁶ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tujuan Singkat* (Depok: Rajawali Pers, 2019).

¹⁷ Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2009).

policies, it's not only about major issues directly related to finance and the state of the nation but also about regulating the lives and behaviors of the community to align with norms and not to harm the community or the nation. Regulations concerning the community, one of which is marriage, might be considered by many as related to human rights. However, in some countries, marriage brings about issues that cannot be trivialized as they affect the state and image of a country. If many issues arise, then the country will experience a decline in evaluation and could even be viewed negatively by other countries.¹⁸

In general, the meaning of the phrase “protection” is any effort, whether it be actions or deeds, undertaken to provide a sense of security and prevent the occurrence of dangers or various things that may cause harm. Protection can mean a place of refuge, thing or act, process, and method to protect something. The concept of protection in the legal field, especially concerning children, is outlined in Article 1 number 2 of the Child Protection Law, which states that child protection is all activities to ensure and protect children and their rights so that they can live, grow, and develop and participate optimally in accordance with human dignity and receive protection from violence and discrimination.¹⁹ The purpose of child protection is to provide a sense of security, free from physical and mental threats, to keep children away from all forms of harm, including efforts to fulfill children's rights so they can grow and develop well. According to Article 3 of the Child Protection Law, child protection aims to ensure the fulfillment of children's rights so they can live, grow, develop, and participate optimally.

Meanwhile, according to the Convention on the Rights of the Child, legal matters regarding children's rights in the Convention can be grouped into 4 categories of children's rights: 1) Survival rights, which are children's rights in the convention; 2) Rights of life, including the right to preserve and maintain life and the right to obtain the highest standard of health and the best possible medical care; 3) Protection rights, including protection from discrimination, violence, and neglect for children without families, such as refugee children; 4) Rights to grow and develop, including all forms of education (formal and non-formal) and the right to achieve a standard of living suitable for the physical, mental, spiritual, moral, and social development of children; 5) Participation rights, which are children's rights in the convention, including the right of children to express their views on all matters affecting them.

B. Policy on Preventing Child Marriage in Indonesia, Malaysia, and India.

Prevention of Child Marriage in Indonesia.

Several factors influencing the rise of child marriage in Indonesia in Indonesia understanding child marriage according to Islam is a marriage that is done by people who have not been married or have not had the first menstruation for a woman. But some Muslim scholars also allow underage marriages by the proposition to follow the Sunnah of the Prophet because history has recorded that Ayesha was married by the Prophet Muhammad at a very young age while Muhammad was in his 50s at that time. Aspects of tradition and culture in the local area also encourage young marriages, by way of an arranged marriage. But certain regions have other reasons, such as in Indramayu, Bali, West

¹⁸ Lathifa Nurul Fadilah and Haura Atthahara, “Implementasi Kebijakan Pemerintah Terkait Penanganan Pernikahan Di India Dan Jepang,” *Jurnal Sains Sosio Humaniora* 7, no. 1 (2023): 116–40, <https://doi.org/10.22437/Jssh.V7i1.23928>.

¹⁹ Hani Suriyani, Nyulistiowati Suryanti, and Hazar Kusmayanti, “Perlindungan Hukum Bagi Anak Pasca Putusan Dispensasi Kawin Yang Ditolak Berdasarkan Peraturan Perundang-Undangan Terkait,” *Hakim* 1, no. 4 (2023): 302–16, <https://doi.org/10.51903/hakim.v1i4.1476>.

Nusa Tenggara, East Nusa Tenggara, young married girls on the initiative of children with parental consent, in this globalization era, the development of science and technology is growing rapidly. One of the developments of science and technology is the emergence of communication tools and social networking. If used improperly, it will have negative consequences for the users. For example, wireless communication is increasingly opening the space for social interaction and free expression of individuals. negative effects of such relationships, the sexual behavior of young people who are permissive and carried out before marriage.²⁰

Here are some recommendations for preventing child marriage in Indonesia:

1) Indonesia has implemented various integrated programs such as the National Strategy for Preventing Child Marriage (Stranas PPA), the National Action Plan for Improving the Welfare of School-Aged Children and Adolescents (RAN-PIJAR), and the Holistic-Integrative Child Development (PAUD-HI) program. These programs play a crucial role in achieving Indonesia as a Child-Friendly Country (Idola) by 2030. This aligns with the government's vision of creating a "Child-Friendly Indonesia" by 2030 and an "Indonesia Emas" by 2024. Through cross-sector collaboration and the implementation of appropriate strategies, significant reductions in child marriage rates are expected for the best interests of children.

2) Prevention of child marriage is a joint commitment between the state and society, initiated by the Ministry of Women's Empowerment and Child Protection (KPPPA). This commitment is based on the understanding that child marriage violates the most comprehensive rights of children, including the right to basic education, reproductive health, economic rights, freedom from violence in various forms, and other social rights as stipulated in the constitution, Child Rights Convention, and various national laws. This joint commitment, which began in 2017 and was relaunched on January 31, 2022, involves 17 ministries/local government agencies, 65 civil society organizations, the Child Journalists Community, the business community represented by the Association of Child-Friendly Companies (APSAI), and religious leaders representing six religions in Indonesia. The efforts of KPPPA continue to prevent child marriage practices in Indonesia and have successfully led to a gradual decline in numbers.

3) According to Presidential Regulation No. 18 of 2020 on the National Medium-Term Development Plan (RPJMN) 2020–2024, a target has been set to reduce the child marriage rate from 11.21% in 2018 to 8.74% by the end of 2024. This shows the government's serious commitment to preventing child marriage as a measurable development priority. Based on this, the National Development Planning Ministry/National Development Planning Agency (Bappenas) has established five national strategies for preventing child marriage: 1) Ensuring the implementation and enforcement of regulations related to preventing child marriage. 2) Increasing capacity and optimizing institutional governance (capacity building for Religious Affairs Officers and Office of Religious Affairs). 3) Strengthening the capacity of religious judicial institutions, Office of Religious Affairs, and educational units. 4) Strengthening the process of regulation development and improvement. 5) Enforcement of regulations. Despite child marriage being still prevalent in Indonesia, the Ministry of Women's Empowerment and Child Protection (Kemen PPPA) encourages the participation

²⁰ Hazar Kusmayanti and Dede Mulyanto, "Problematics Culture Of Child Marriage In Indramayu In A Legal And Cultural Perspective," *Jurnal Pembaharuan Hukum* 7, no. 2 (2020): 116–27.

of Ministries/Agencies in preventing child marriage through the implementation of the National Strategy for Preventing Child Marriage (Stranas PPA) in various sectors. Supporting this, KemenPPPA organizes Technical Guidance activities for Ministries/Agencies in Preventing Child Marriage.

4) Moreover, the approach must be holistic, involving children, parents, communities, and both local and central governments. It emphasizes the importance of strong strategies and coordination in this effort, highlighting the importance of campaigns, community engagement, and the role of policymakers in making preventing child marriage a priority.²¹

5) Collaboration between Indonesia and UNICEF to Address Child Marriage According to the UN Convention on the Rights of the Child (UNCRC), children's rights are ethical principles and international standards regarding actions towards children. UNCRC states that children are individuals under the age of 18 who should be nurtured to grow, learn, play, and develop in accordance with their human dignity, as well as be protected from harm. In this context, states are obligated to respect and promote all children's rights, protect them from all forms of discrimination, violence, and exploitation. States must take legislative and administrative steps to ensure that all children are protected, and children's best interests are the primary consideration in all decisions or actions taken (UNICEF Indonesia, 2020). The Indonesian government collaborates with UNICEF to address these issues, with one of UNICEF's main focuses being child marriage, which remains high in Indonesia. The child marriage rate in Indonesia was 10.35% in 2020. The government aims to reduce it to 8.74% by 2024 and 6.94% by 2030. To achieve this, the Indonesian government has developed the National Strategy for Preventing Child Marriage.²² Although marriage laws have been revised to protect girls under the age of 19 from forced marriages, there are still gaps that allow child marriages to occur in Indonesia. Many marriage practices are due to long-held beliefs and traditions in certain cultures or religions, as well as economic situations for less privileged communities. UNICEF continues to work towards eliminating child marriage in Indonesia through support for efforts such as the Life Skills Education (PKH) program, which aims to empower young people to face daily challenges, including child marriage. Through this approach, it is hoped that young people can gain knowledge about important topics and acquire skills to manage risks and make independent decisions based on sufficient information in their personal lives, including the dangers of child marriage (UNICEF Indonesia, 2020).²³

Efforts to Prevent Child Marriage in Malaysia

In 2018, news of a 41-year-old man marrying an 11-year-old girl in Kelantan caused outrage with many people demanding the Malaysian government take a stronger stance to ban child marriages. Malaysia has been criticized or not doing enough to address child marriage and is under pressure to lift its game. Selangor and Kedah are the only states to have increased the legal minimum age of marriage to 18. Many scholars have explained marriage below the age of 18 is an irresponsible action leading to uncertainty in married

²¹ Q. Barkah et al., "Abandonment of Women's Rights in Child Marriage; An Islamic Law Perspective," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 17, no. 2 (2022): 383–411, <https://doi.org/https://doi.org/10.19105/al-Ihkam.v17i2.6725>.

²² S. Gandhawangi, "Lingkungan Kerja Masih Rawan Kekerasan Seksual," *Kompas.Id*, n.d., <https://www.kompas.id/baca/humaniora/2023/01/25/lingkungan-kerja-masih-rawan-kekerasan-seksual>, access 20/03/2024.

²³ Yeni Herliana Yoshida, Junita Budi Rachman, and Wawan Budi Darmawan, "No Title," *Aliansi: Jurnal Politik, Keamanan Dan Hubungan Internasional* 1, no. 3 (2022).

life. This uncertainty has led to long-term economic impacts, domestic violence, divorce, and psychological issues for girls at a very young age.

While Malaysian parliamentarians²⁴ have approved several amendments to the Child Protection Act throughout the years, they have failed to include a ban on child marriage despite several proposals. It would seem to make any headway in Malaysia’s multi-ethnic, cultural, and legal settings, there must be a commitment from all parties to agree to put an end to child marriage. Child marriage deprives children of their rights to education, safety, health, social mobility, and economic opportunity. According to Save the Children, by 2030, 150 million girls worldwide will be affected. The problem to be addressed by this study is when a couple marries at a young age, they may face several issues, including financial difficulties. Early marriage occurs between the ages of 16 and 25, implying that a person does not have sufficient financial resources to start a family.²⁵ Under Malaysian law, underage marriage for non-Muslims is governed by civil marriage law while underage marriage for Muslims is governed by Islamic family law in the Syariah courts. Under this dual legal system, the legal minimum age of marriage for Muslim men is 18 and 16 for women; for non-Muslim men and women, the legal minimum age is 18.

Malaysia’s Federal Constitution²⁶ gave each state the power to implement and change certain sections of the law as they see fit. The most debatable point of current Islamic family law relates to sections allowing the marriage of females below the age of 18 by obtaining permission from a Chief Minister or Syariah judges. The public has opposed such regulations since children at this age are considered too young to be forced into adulthood before they are prepared physically and mentally.²⁷ In 2019, the Indonesian government changed its child marriage laws by increasing the minimum age to 19. Thailand and the Philippines have placed the legal minimum age of marriage at 17 and 18 respectively. Having countries, including developed countries, set the legal minimum age of marriage to 18 allows children to develop cognitively, emotionally, and physically. In Malaysia, the decentralized enforcement of marriage law is the greater challenge, and reaching a consensus to ban child marriage is a struggle. From 2010 to 2015, nearly 6,268 marriage applications from those under 18 were recorded and approved by Syariah courts across Malaysia. According to the latest report, about 1,500 cases of child marriages were reported between 2007 and 2017 and, as of 2018, 1500 children have married annually, slightly lower compared to 2,107 marriages in 2017. UNICEF reported that in 2018, 1,856 children were married with 90 percent of these being girls. The number of Muslim children married vastly outnumbered non-Muslims with 1,542 Muslim children compared to 234 non-Muslim children.

Table 1: Statistic of Application for Permission to Marry Below the Minimum Age in Syariah Courts, Between the Year of 2013 and 2017 Source: (New Straits Times, 2018)

State	Statistics
Sarawak	918

²⁴ Ayako Kohno, “[In]-Depth Examination of Issues Surrounding the Reasons for Child Marriage in {Kelantan},(2019). Malaysia: A Qualitative Study,” *BMJ Open* 9., n.d.

²⁵ A. Kohno et al., “Why Girls Get Married Early in Sarawak, Malaysia-an Exploratory Qualitative Study,” *BMC Women’s Health* 20, no. 2 (2020): 1–13, <https://doi.org/10.1186/s12905-020-00911-z>.

²⁶ M. G Peletz, “Are Women Getting (More) Justice? Malaysia’s Sharia Courts in Ethnographic and Historical Perspective,” *Law & Society Review* 52, no. 3 (2018): 652–684, <https://doi.org/10.1111/LASR.12346>.

²⁷ W. Amir et al., “Equity Crowdfunding in Malaysia: Legal and Sharia Challenges,” *International Journal of Asian Social Science* 99, no. 8 (2019): 460–460, <https://doi.org/10.18488/JOURNAL.1.2019.98.450.460>.

Sabah	793
Kelantan	793
Johor	440
Terangganu	407
Kedah	389
Selangor	385
Pahang	354
Perak	266
Federal Territory	178
Negeri Sembilan	155
Perlis	107
Melaka	91
Penang	86

Based on the statistical data from the New Straits Times above, it can be seen that the number of applications for permission to marry underage (marriage dispensation) in the Malaysian courts between 2013 and 2017 was highest in Sarawak with 918 applicants and lowest in Penang with 86 applicants. Poverty is one reason parents marry off their children to ease the financial pressure. The government released a National Strategic Plan in Handling Causes of Child Marriage to identify five major factors placing children at risk of early marriage - poverty or low household income, lack of access to reproductive health education and parenting skills, lack of access to education and poor school attendance, stigma and social norms on child marriage, and laws that allow for marriage under the age of 18.

The efforts of the Malaysian government to prevent child marriage are:

First, the plan to end child marriages calls for strategic partnerships between government agencies at the federal and state levels, NGOs, and the public. However, insufficient resources due to various crises and a lack of political will have hampered implementation. Despite the preventive measures highlighted in the plan, the haphazard enforcement of marriage laws by state governments and the need to improve the availability of data on child marriage remain stumbling blocks.

Due to the complexity and devastating consequences of child marriage, early intervention is vital. A ban on child marriage and an increase in the legal minimum age ensures a far-reaching impact in reducing child abuse cases, early pregnancy and subsequently child marriages.²⁸ Even legitimate cultural practices would have to be phased out, but policymakers would need to be more responsive and prepared to make tough decisions. The benefits of increasing the minimum age outweigh the costs. This would of course put pressure on religious leaders to also act and to help build a better future and sustainability of life for children and achieve equality and empowerment of all women and girls.²⁹

²⁸ M. H. Hassim, M. Abral, and N. Z. Salam, "Spektrum Perkahwinan Kanak-Kanak Di Malaysia: Kajian Perbandingan Antara Enakmen Undang-Undang Keluarga Islam Negeri, Akta Memperbaharui Undang-Undang (Perkahwinan Dan Perceraian) 1976 Dan Konvensyen Antara Bangsa," *E-Jurnal Penyelidikan Dan Inovasi* 7, no. 1 (2020): 20-44.

²⁹ C. M. Harvey et al., "Premarital Conception Is a Driver of Child Marriage and Early Union in Selected Southeast Asia and the Pacific Countries," *Journal of Adolescent Health* 70, no. 3 (2022): 43-46.

Second, the implementation of tighter laws could lead to a fall in child brides which would align with the concept of the Prime Minister's vision of 'Malaysia Madani' (a civil Malaysia) and a more compassionate government which could curb child marriages through legal reforms. It helps to understand this issue from a child's perspective. Understanding this issue from their perspective is critical as their input could in hindsight put an end to any policy stalemate. This would be an important milestone in the policy-making process since their opinions are undervalued in research and policies. The conceptualization of children's rights can be best understood by studying and incorporating their perspective into policy measures. This would carry meaningful messages from children to policy problems and the public and create a better environment for a child's development and well-being for the future.

Third, in Act 303 of the Islamic Family Law (Federal Territories) Act 1984 Part II – Marriage Section 11, it states: "A marriage is not valid unless all the necessary conditions, according to Islamic law³⁰, are fulfilled to make it valid." Almost all states in Malaysia have the same understanding of marriage as mentioned above, but the difference lies only in the sections. In Malaysia,³¹ the minimum marriage age is 18 years for males and 16 years for females. However, those who have not reached the minimum age can apply for dispensation from the Sharia Court to validly marry and have their marriage recognized by the state. According to statistical data from the Malaysian Sharia Judiciary Department (JKSM), in 2011 there was an increase in data from the Sharia law department, which approved 1,022 marriage registrations and at that time 900 marriages of underage girls were approved. In 2012, there were about 1,165 marriage registrations with younger female ages. In May 2013, JKSM received 600 marriage registration letters, of which only 446 were approved.

Forth, Malaysia, along with 90 other countries³², has agreed to adopt a UN resolution to end child exploitation, including child marriages. However, this does not reflect the reality on the ground, as according to JKSM data, the number of child marriages is increasing. It can be concluded that the incidence of child marriage in Malaysia is very high. Child marriage can have many negative impacts on the health of the couple. Furthermore, it can also have consequences for the health of their children in the future. Looking at the physical health of girls, reproductive organs in girls under the age of 20 can be at risk of various diseases, such as cervical cancer and breast cancer. Additionally, pregnancy under the age of 20 can pose risks of bleeding, anemia, pre-eclampsia and eclampsia, infections during pregnancy, and miscarriages. Girls who become pregnant and give birth at the age of 10-14 have a risk 5 times higher than women aged 20-24.

Efforts to Prevent Child Marriage in India

Legislation in India has already banned child marriage, yet a community in the state of Gujarat continues to marry children. The minimum marriageable age in India is 18 for females and 21 for males. Census data indicates that nearly one-third of girls get married before turning 18. This practice is prevalent, particularly among minority religions. The

³⁰ A. Mohd and N. A Kadir, "Minimum Age of Marriage under Islamic Law and the Islamic Family Law (Federal Territories) Act 1984: A Preliminary Study on the Ideal Age of Marriage in Malaysia," *AL-SHAJ'ARAH* 24, no. 2 (2019), <https://doi.org/10.31436/shajarah.v24i2.945>.

³¹ A. Farid et al., "Negotiating Ideations: The Role of State-Led Identity-Making in the Progress of Women's Rights in Malaysia," 2022.

³² N. R. Nik Wajis et al., "Perkahwinan Kanak-Kanak Di Malaysia: Had Umur Minimum Dan Implikasinya," *Malaysian Journal of Syariah and Law* 8, no. 2 (2020): 15–30, <https://doi.org/10.33102/mjsl.vol8no2.252>.

tradition of child marriage persists among the Rabari indigenous community in the Kutch region of Gujarat.

The practice of child marriage is a possible threat to India's aim of accomplishing Sustainable Development Goal (SDG) 5 by 2030,³³ which aims to achieve women empowerment and gender equality. Child marriage violates the rights of children and denies them the freedom to develop and obtain education and have a life of liberty and pride. It bereaved young girls of their potential and obstructed their social and individual development. Due to premature subjection to sexual acts and pregnancy, girls who are married at a very early age become prone to sexual and reproductive illness.³⁴ Young pregnant girls, during childbirth, face complications and death. Girls with a poor background who get married in their childhood rarely get access to health care facilities. Research also shows a high rate of sickness and death among babies of mothers who are under 18 years of age. Child marriage is like child abuse and for many young girls, it means the commencement of regular and unsafe sexual acts that can have grave repercussions on the health of young girls, such as infant mortality, maternal mortality, anemia and can cause diseases like HIV/ AIDS

India is one of the countries continually striving for gender justice³⁵, enacting relevant laws and protecting women's rights. The regions in India with the highest incidence of child marriage are Bihar (69%), followed by Rajasthan (65%), Jharkhand (63%), Uttar Pradesh (59%), and others. Child marriage in India is also a consequence of other gender biases prevalent in the country, including disparities in education and employment. Several action plans, schemes, and programs have been adopted to improve the situation of girls. For instance, under the scheme in Haryana known as "Apni Rot Apni Dhan" (one's daughter, one's wealth), the state promises to provide food and childcare for girls. Similar schemes exist in many other states. SAARC declared 1991-2000 as the "Decade of the Girl Child" and formulated national action plans for girls during that period, acknowledging girls' rights to equal opportunities, freedom from hunger, illiteracy, ignorance, and exploitation. However, SAARC lacks the political commitment and will to act.

In India, under the Prohibition of Child Marriage Act, 2006, a child is defined as "a person who, if male, has not completed twenty-one years of age, and if female, has not completed eighteen years of age." This law also declares marriages between children below the legal age null and void. It imposes penalties for various offenses related to allowing or conducting child marriages or marrying minors to adults. Despite this, child marriages are still widespread across the country. States like Rajasthan, Uttar Pradesh, Madhya Pradesh, Jharkhand, Chhattisgarh, Bihar, and Andhra Pradesh still have average marriage ages below eighteen for females. These states, where child marriage is most prevalent, also have high populations. Child marriage in India has serious implications for teenage population control.³⁶

India has also made various efforts to eradicate child marriage, including ratifying several conventions such as the Convention on the Rights of the Child (CRC) in 1992, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

³³ SJ Jejeebhoy, *Ending Child Marriage in India, Drivers, and Strategies* (New Delhi: UNICEF, 2019).

³⁴ "Report Proposal To Amend The Prohibition of Child Marriage Act, 2006 and Other Allied Laws (Report No. 205)," 2008.

³⁵ C. Lo Forte et al., "What Can the Global Movement to End Child Marriage Learn from the Implementation of Other Multi-Sectoral Initiatives?," *BMJ Global Health* 4, no. 5 (2019): 1-10, 10.1136/bmjgh-2019-001739.

³⁶ <https://www.childlineindia.org/a/issues/child-marriage>

in 1993, and the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1976, as well as the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery in 1956, and the convention on the fulfillment of 454 human rights of children and women created by the South Asian Regional Commitments (SAARC). India then adopted these conventions by enacting national laws prohibiting marriage such as The Prohibition of Child Marriage Act (2006) PCMA (NCPRC, 2017). PCMA is the primary law for combating child marriage adopted from CRC and CEDAW. Additionally, PCMA is supported by other laws that also adopt provisions from international conventions such as amendments to the Dowry Prohibition Act, Juvenile Justice, POSCO, The Protection of Women from Domestic Violence Act, National Policy for Children, National Policy for Children, 2013, and others.³⁷

CONCLUSION

Initially, Indonesia set the minimum marriage age at 19 for men and 16 for women, as outlined in Law No. 1 of 1974 and Islamic law compilations. Subsequently, this limit was adjusted to 19 years for both genders under Law No. 16 of 2019. Meanwhile, Malaysia's marriage age limit is 18. Both nations have witnessed attempts to revise their minimum marriage age, particularly for women, driven by socio-cultural and socio-political considerations. The existing marriage age regulations in both countries are seen as incompatible with children's rights, detrimental to women's reproductive health, and obstructive to educational programs for children. Essentially, marrying at a young age is deemed physically immature and disadvantageous for women. The increasing instances of child marriage, premarital pregnancy, and abortion practices in both countries have fueled the desire among certain groups to amend the marriage age laws. Notably, Indonesia has successfully adjusted its minimum marriage age to 19 for both genders in line with community aspirations, as stipulated in Law No. 16 of 2019. However, Malaysia, except for Selangor State, has generally maintained its regulations, setting the marriage age at 18 for both men and women. India has also made various efforts to eradicate child marriage, including ratifying several conventions such as the Convention on the Rights of the Child (CRC) in 1992, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993, and the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1976, as well as the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery in 1956, and the convention on the fulfillment of 454 human rights of children and women created by the South Asian Regional Commitments (SAARC). India then adopted these conventions by enacting national laws prohibiting marriage such as The Prohibition of Child Marriage Act (2006) PCMA (NCPRC, 2017). PCMA is the primary law for combating child marriage adopted from CRC and CEDAW.

³⁷ Alfiandia Vamyla Azhar Putri, "Kendala India Dalam Upaya Mematuhi Konvensi Internasional Terkait Pemenuhan HAM Anak Perempuan Dalam Pemberantasan Pernikahan Anak Di India Melalui Pemberlakuan UU PCMA," *Journal of International Relations* 6, no. 3 (2020): 453-62.

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