

Challenges, Regulations, and Strategies to Prevent Child Marriage in Indonesia: A Comparative Study with Malaysia

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Abstract : *Child marriage is a global issue that has become a challenge in many countries, one of which is Indonesia. The purpose of this research is to explore the factors of child marriage, analyze the child marriage regulations applied by Indonesia and then compare them with Malaysia in order to find the best ideal formulation for Indonesia in terms of regulating child marriage, and map out what steps need to be taken to reduce the number of child marriages. Included in the type of normative legal research by collecting all relevant legal materials through library research techniques and then analyzed descriptively qualitative. The results show that there are nine factors for child marriage ranging from poverty to self-will. In addition, there are differences in child marriage regulations in Indonesia and Malaysia where the positive thing that Indonesia can adopt from Malaysia is the synchronization of the age of the child in the Marriage Law and the Child Protection Law to be in line with the Convention on the Rights of the Child. Efforts to reduce the number of child marriages must have a strong synergy between the government and the community.*

Keywords : *Child marriage; Family Law; Indonesia, Malaysia.*

Abstrak : Pernikahan anak merupakan isu global yang menjadi tantangan tersendiri di banyak negara, salah satunya adalah Indonesia. Tujuan dari penelitian ini yaitu mengeksplor faktor-faktor terjadinya pernikahan anak, menganalisis regulasi pernikahan anak yang diterapkan Indonesia untuk kemudian dibandingkan dengan Malaysia agar ditemukan sebuah formulasi ideal yang terbaik bagi Indonesia dalam hal pengaturan pernikahan anak, serta memetakan terhadap langkah apa saja yang perlu ditempuh untuk menekan angka pernikahan anak. Termasuk dalam jenis penelitian hukum normatif dengan mengumpulkan semua bahan hukum yang relevan melalui teknik *library research* untuk kemudian dianalisis secara deskriptif kualitatif. Hasil penelitian menunjukkan bahwa terdapat sembilan faktor terjadinya pernikahan anak mulai dari kemiskinan hingga keinginan dari diri sendiri. Selain itu, terdapat perbedaan pengaturan pernikahan anak di Indonesia dan Malaysia dimana hal positif yang dapat diadopsi oleh Indonesia dari Malaysia adalah sinkronisasi usia anak dalam Undang-Undang Perkawinan dan Undang-Undang Perlindungan Anak agar selaras dengan Konvensi Hak Anak. Upaya untuk menekan angka pernikahan anak harus ada sinergi yang kuat antara pemerintah dan masyarakat.

Kata kunci : Pernikahan Anak; Hukum Keluarga; Indonesia, Malaysia.



I. PENDAHULUAN

Marriage has significance as the union of two individuals who are legally or formally recognized as partners in a personal relationship. This concept is governed by various elements such as laws, regulations, customs, beliefs, and other factors. Because marriage is a social system, its form changes with the times and is under the influence of culture, religion and other aspects. Marriage systems and practices vary across geographical regions, social castes, or tribes.¹ To be able to enter into marriage, basically both parties must at least be at the adult stage both in terms of the ability to act and in terms of formal legitimacy set by the state in the form of age limits so that they can be said to be adults. However, marriage also raises complex problems that are a scourge for several countries in the world, one of which is underage marriage or commonly referred to as early marriage or child marriage.

UNICEF² universally defines child marriage as a formal or informal marriage entered into under the age of 18.³ Reporting from the official website of the Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia, applications for dispensation of child marriage that entered the Religious Courts in 2021 were recorded at 65 thousand submissions and in 2022 there were 55 thousand submissions.⁴ This is a phenomenon that we often encounter in Indonesian society and needs serious attention because it can cause complex problems for both parties who have become married couples but are still immature. The complexity of problems related to child marriage has actually often emerged as a topic of discussion in various circles. However, this is an irony because the rooted practice of child marriage in Indonesia has never ended.

Child marriage raises a number of dilemmas and complexities that invite interdisciplinary studies, such as health, psychology, education, and other fields of science. The dynamics arising from child marriage open the door for in-depth exploration, raising a number of interesting questions that involve various aspects of life in the issue. To narrow down the breadth of the study of child marriage, three main streams will be selected to be studied in this research, namely the factors that cause child marriage, analysis of child marriage regulations in Indonesia, and efforts to protect children's rights to prevent child marriage where these three things are included in the realm of legal studies.

In this research, of the three aspects to be studied as mentioned in the previous point, one aspect related to the regulation of child marriage in Indonesia will be compared

¹ Banasree Mandal. "Child Marriage." *Science and Culture: A Journal of Natural and Cultural Science* 87, No. 9-10 (2021): 373-377, p. 373.

² The United Nations Children's Fund abbreviated as UNICEF is a United Nations organization that aims to provide humanitarian assistance and long-term welfare development to children and their mothers in developing countries. It is a member of the United Nations Development Group and is headquartered in New York City.

³ Meghan Arthur, Alison Earle, Amy Raub, Ilona Vincent, Efe Atabay, Isabel Latz, Gabriella Kranz, Arijit Nandi, and Jody Heymann. "Child Marriage Laws Around the World: Minimum Marriage Age, Legal Exceptions, and Gender Disparities." *Journal of Women, Politics & Policy* 39, No. 1 (2018): 51-74, p. 51.

⁴ Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia. (2023). *Perkawinan Anak di Indonesia Sudah Mengkhawatirkan*. Available from <https://www.kemempwa.go.id/index.php/page/read/29/4357/kemen-pppa-perkawinan-anak-di-indonesia-sudah-mengkhawatirkan>, accessed on September 13, 2023.

with Malaysia. Malaysia was chosen as a comparison country because both Indonesia and Malaysia are historically a Malay race, where in their development the two countries also have similarities and similarities in several aspects. One of them is the formation of the rules of marriage law in both countries which is more or less influenced by legal politics in their respective countries, where the roots also intersect with the teachings of Islam. Another reason is that Malaysia is a country where the majority of the population adheres to Islam, which is also the same thing as Indonesia, which has a majority Muslim population. Thus, the hope is to see the similarities and differences between the two countries in terms of regulating child marriage and what positive things Indonesia can learn from Malaysia in terms of regulating child marriage.

To prove that this research has novelty value, it will be mentioned and described several studies that have been conducted on similar topics where later it will explain the differences between this research and several of these studies. Several studies related to child marriage have been written, one of which is entitled “Kajian Hukum Perkawinan Anak di Bawah Umur Menurut Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan” by Brigita Simanjourang.⁵ The results showed that underage marriage has legal consequences, the Indonesian Marriage Law regulates the minimum age of marriage which was originally for men 19 years and women 16 years, after being revised to be the same for the minimum age of men and women, namely 19 years.

Other research that has been done is entitled “Dispensasi Perkawinan Anak di Bawah Umur: Perspektif Hukum Adat, Hukum Negara, dan Hukum Islam” by Safrin Salam.⁶ The results showed that the reasons for the marriage dispensation application submitted by the applicant's parents were generally two things, namely not being old enough and the bride was pregnant. In addition, child marriage through the marriage dispensation process from the perspective of the Marriage Law, Compilation of Islamic Law, and customary law needs to establish basic criteria and restrictions on marriage dispensation. In addition, another research that has also been conducted is entitled “Tinjauan Yuridis Terhadap Perkawinan Anak di Bawah Umur Dilihat dari Sudut Pandang Undang-Undang Nomor 1 Tahun 1974” by Jessica Tiara Mai.⁷ The result of this study is that the Marriage Law regulates the age limit for marriage, which is 19 years for men and 16 years for women. The government policy in setting the minimum age limit for marriage is of course through a process and various considerations, this is so that both parties are truly ready and mature from a physical, psychological, and mental perspective.

The three studies are limited to the level of positive law that applies in the law only. Whereas in this research, the study will also look at the causal factors and efforts to protect children from the entrenched practice of child marriage. In addition, this research also

⁵ Brigita Simanjourang. “Kajian Hukum Perkawinan Anak di Bawah Umur Menurut Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.” *Lex Privatum* 10, No. 1 (2022): 48-57, p. 48.

⁶ Safrin Salam. “Dispensasi Perkawinan Anak di Bawah Umur: Perspektif Hukum Adat, Hukum Negara, dan Hukum Islam.” *Pagaranyuang Law Journal* 1, No. 1 (2017): 110-124, p. 110.

⁷ Jessica Tiara Mai. “Tinjauan Yuridis Terhadap Perkawinan Anak di Bawah Umur Dilihat dari Sudut Pandang Undang-Undang Nomor 1 Tahun 1974.” *Lex Crimen* 8, No. 4 (2019): 114-121, p. 114.

tries to explore the rules related to the discussion that will be studied through the positive law that applies in another country, namely Malaysia. Thus, it can be proven clearly and can be accounted for academically that this research has novelty value as a contribution in enriching the scientific repertoire, especially legal science itself. Thus, there will be several problem formulations that will be studied in this study, namely what are the factors that cause child marriage, how are child marriage arrangements in Indonesia, how are child marriage arrangements in Malaysia, and what can be learned from Malaysia regarding child marriage arrangements for ideal policy formulation for Indonesia in terms of regulating child marriage.

II. RESEARCH METHOD

This research is legal research which is defined as a study with the object of study is law, both law as a science or rules that are dogmatic in nature and laws relating to behavior and community life.⁸ This research is included in the type of normative legal research that examines the law from an internal perspective with the object of research is legal norms⁹ by basing its analysis on applicable laws and regulations relevant to the legal issues that are the focus of the research.¹⁰ In order to find answers to the issues developed in the research, a research approach is needed to obtain information from various aspects in accordance with the characteristics of the legal issues raised.¹¹ The approach used in the research uses an approach commonly used in legal research, namely a comparative approach, a statute approach, and a conceptual approach..

In normative legal research, the term legal data is not recognized but rather the term legal material in the research process. The legal materials traced in this research include primary legal materials (primary resource), secondary legal materials (secondary resource), and tertiary legal materials (tertiary resource).¹² Primary legal materials are binding legal materials in the form of laws and regulations in both Indonesia and Malaysia. Secondary legal materials are legal materials that provide explanations of primary legal materials including literature, scientific research results, reference books, scientific works of scholars, journals, scientific articles, etc. Tertiary legal materials are legal materials that provide guidance and explanations of primary legal materials and secondary legal materials such as bibliographies, legal dictionaries, and encyclopedias. All legal materials were collected using library research techniques.

The legal materials that have been collected are analyzed descriptively qualitatively with deductive inference in order to map the factors that cause child marriage, then explain in detail and structured on a norm that regulates child marriage between Indonesia

⁸ Jonaedi Efendi and Johnny Ibrahim. *Metode Penelitian Hukum: Normatif dan Empiris*. Depok: Prenada Media, 2018, p. 16.

⁹ I Made Pasek Diantha. *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*. Jakarta: Prenada Media, 2016, p. 12.

¹⁰ Kornelius Benuf and Muhamad Azhar. "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer." *Gema Keadilan* 7, No. 1 (2020): 20-33, p. 24.

¹¹ Djulaeka and Devi Rahayu. *Buku Ajar: Metode Penelitian Hukum*. Surabaya: Scopindo Media Pustaka, 2020, p. 32.

¹² Rahman Amin. *Pengantar Hukum Indonesia*. Yogyakarta: Deepublish, 2019, pp. 61-62.

and Malaysia, then examine the correlation between norms or legal provisions, reveal areas of law that are experiencing difficulties (or may face difficulties) and if possible, to predict future legal developments related to child marriage regulations that are best for Indonesia.

III. DISCUSSION

Unraveling the Complexity of Child Marriage Factors

In the Islamic view, marriage is considered a *mitsaqan-galizhan*, a strong and firm promise. This concept is reflected through Allah's words in Surah an-Nisa 4:21 which emphasizes that each individual, including husbands, wives, and children, has their own responsibilities and rights that must be carried out and respected.¹³ Marriage in the Islamic perspective is considered a sacred bond that has an impact both in the life of the world and the hereafter. The establishment of a family in Islam through marriage is directed at realizing *mawaddah wa rahmah*, namely love and affection with the ultimate goal of achieving the pleasure of Allah.¹⁴ Marriage is often regarded as a religious requirement that encourages its adherents to step into the bonds of matrimony.

In the context of Christianity and Islam, marriage is encouraged for those who have reached maturity. One of its purposes is to provide a proper framework for managing aspects of sexuality. Religious pressure that prohibits sexual relations before marriage and condemns births outside of marriage is sometimes interpreted as a justification for child marriage without considering the consequences that may arise in the future.¹⁵ Child marriage, globally defined as a marriage that occurs before the age of 18, is considered a serious human rights violation. Although prohibited by the Convention on the Rights of the Child¹⁶ and the Convention on the Elimination of All Forms of Discrimination Against Women¹⁷ (the two most widely supported international human rights treaties), this phenomenon remains a persistent global issue.¹⁸ This challenge is also a problem for Indonesia because ironically, child marriage cases in Indonesia have increased significantly every year.

Data from UNICEF shows that Indonesia is ranked 37th in the world, and second only to Cambodia in terms of child marriage in Southeast Asian countries. The percentage of child marriages in Indonesia stands at 23%, meaning that one in four women in

¹³ Rahmaditta Kurniawati and Nurus Sa'adah. "Konseling Lintas Budaya: Sebagai Upaya Preventif Pernikahan Dini." *Islamic Counseling: Jurnal Bimbingan Konseling Islam* 6, No. 1 (2022): 51-74, p. 52.

¹⁴ Musdah Mulia. *Muslimah Reformis for Milenial*. Jakarta: Elex Media Komputindo, 2021, p. 135.

¹⁵ Jimoh Amzat. "Faith Effect and Voice on Early Marriage in a Nigerian State." *SAGE Open* 10, No. 2 (2020): 1-9, p. 1.

¹⁶ The Convention on the Rights of the Child (UNCRC) is a human rights treaty that guarantees children's rights in the civil, political, economic, social, health, and cultural fields that was ratified in 1989 by the United Nations.

¹⁷ The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) is an international treaty established in 1979 by the United Nations General Assembly.

¹⁸ Mat Lowe, Mamsamba Joof, and Bomar Mendez Roja. "Social and Cultural Factors Perpetuating Early Marriage in Rural Gambia: An Exploratory Mixed Methods Study." *F1000Research* 8, No. 1949 (2020): 1-17, p. 3.

Indonesia enter into marriage before the age of 18.¹⁹ Based on searches that have been obtained from various published scientific literature, the problem of child marriage is suspected by many factors that encourage this. The following are the factors that encourage child marriage in Indonesia, among others:

1. Economic situation (poverty)

The inadequate economic situation in a family often triggers parents to decide to match their children with partners who are considered more capable. Financial limitations make it difficult for parents to fulfill their children's living and educational needs, thus encouraging children to take the step of early marriage as an effort to reduce the family's economic burden.²⁰ Some parents are of the view that if their daughter has a suitor ready to marry her, it will at least give their daughter financial independence and reduce dependence on her parents.²¹ Girls are often considered an asset by some parents and when one proposes, it becomes a hope to be able to help ease the burden on the family and improve the social status of the family so that they can escape the shackles of poverty that have ensnared them.

2. Low education

Education has a significant impact on the mindset of a person, the occurrence of child marriage is also due to the level of education of adolescents and their parents. One's education plays a key role in shaping one's perspective and psychosocial maturity. When looking from the point of view of parents' education, which may only reach elementary school level or even without formal education, this causes a lack of understanding regarding the concept of an ideal marriage. Parents often only see their children as "grown up" individuals without understanding the important aspects of an ideal marriage.²² As a result, parents tend to marry off their children and assume that the time has come to do so. Parents' limited understanding of the concept of an ideal marriage plays a key role in this decision. From the child's point of view, low intelligence and knowledge in children can lead to a tendency to marry at a young age.²³ The level of education is an important foundation in the logical thought process related to the decision to marry at a young age, where children (especially women) with low education tend to marry at a younger age. The role of parents in their children's education is also vital, as within the family environment, children's education is the main factor that influences their life decisions, including marriage. Adolescents who have gone through higher education tend to choose

¹⁹ Jeneri Alfa Sela Mangande, Desi, and John Radius Lahade. "Kualitas Pernikahan dan Status Kesehatan Mental Pada Perempuan yang Menikah Usia Dini." *Jurnal Keperawatan Jima* 9, No. 2 (2021): 293-310, p. 294.

²⁰ Elisabeth Putri Lahitani Tampubolon. "Permasalahan Perkawinan Dini di Indonesia." *Jurnal Indonesia Sosial Sains* 2, No. 5 (2021): 738-746, pp. 740-741.

²¹ Siti Nurul Khaerani. "Faktor Ekonomi Dalam Pernikahan Dini Pada Masyarakat Sasak Lombok." *Qanwam* 13, No. 1 (2019): 1-13, p. 6.

²² Rovi Husnaini and Devi Soraya. "Dampak Pernikahan Usia Dini (Analisis Feminis Pada Pernikahan Anak Perempuan di Desa Cibunar Kecamatan Cibatu Kabupaten Garut)." *Jaqfi: Jurnal Aqidah dan Filsafat Islam* 4, No. 1 (2019): 63-77, p. 71.

²³ Rizqy Amelia, Mohdari, and Aulia Azizah. "Pengaruh Penyuluhan Terhadap Pengetahuan Remaja tentang Pernikahan Dini di Kelas VIII di SMP Negeri 4 Banjarmasin." *Dinamika Kesehatan: Jurnal Kebidanan dan Keperawatan* 8, No. 1 (2017): 64-77, p. 70.

to postpone marriage at an early age, they are influenced by the busyness and targets that must be achieved as a result of their education.

They seek to optimize the knowledge and skills acquired through education to achieve high work performance. This preoccupation often leads them to reconsider the decision to marry at a young age, given its potential impact on their careers and achievements. Conversely, adolescents (especially women) with low education are more likely to spend more time on household tasks, which can affect their overall productivity. Adequate education levels provide easier access to relevant information, especially regarding the negative impact of early marriage on health and well-being. Therefore, career-active women are more likely to delay marriage to focus on their professional achievements.²⁴

3. Community culture (customs)

Indonesia as a pluralistic country with various tribes and races in each region makes Indonesia a country rich in culture and customs that have been passed down from generation to generation. Seeing in some areas, child marriage is also triggered by the traditions and culture of the community that are still preserved today, for example, one of the traditions of the Sasak tribe in Lombok, namely *merariq*.²⁵ In the Sasak tradition, *merariq* is considered a concrete step to free a girl from the control of her parents and family through marriage, with the main condition being reaching maturity. However, because this tradition does not provide an age limit in its application, *merariq* eventually became one of the cultures that perpetuate the practice of early marriage because the benchmark only looks at maturity marked by menstruation for women (*akil baligh*).

Another culture can also be seen in Madurese society where the tradition of arranged marriage is still strongly maintained, both starting from the womb and in childhood through the *tan-mantaran* tradition. The *tan-mantaran* tradition is a child marriage tradition that involves a process similar to an adult marriage, from engagement (*bebekalan*) to the wedding reception. However, the difference lies in the fact that *ijab qabul* is not carried out in the process due to the age of the children, which still ranges from 4-10 years old, so the couple is not yet bound as husband and wife.²⁶ This cultural factor actually has a lot to do with other factors such as arranged marriages and the stigma of spinsterhood that children want to avoid.

4. Misinterpretation of religion

One of the things that makes child marriage generally legitimized by society is the view or interpretation of religion (especially Islam) which comes from the hadith that the Prophet married Aisha at the age of six.²⁷ In fact, any religion has provided correct

²⁴ Novi Kurniawati and Kurnia Indriyanti Purnama Sari. "Determinan Faktor Pemicu Terjadinya Pernikahan Dini Pada Usia Remaja." *Jurnal Keperawatan* 13, No. 1 (2020): 12-23, p. 19.

²⁵ Ahmad Syaerozi. "Revitalisasi Adat Kawin Lari (Merariq) Suku Sasak Sebagai Upaya Pencegahan Pernikahan Anak dan Sirri: Sebuah Pemikiran." *Jurnal Multikultural dan Multireligius* 18, No. 2 (2019): 337-354, p. 339.

²⁶ Yudho Bawono, Setyaningsih, Lailatul M. Hanim, Masrifah, dan Jayaning S. Astuti. "Budaya and Pernikahan Dini di Indonesia." *Jurnal Dinamika Sosial Budaya* 24, No. 1 (2022): 83-91, p. 86.

²⁷ Mayadina Rohmi Musfiroh. "Pernikahan Dini dan Upaya Perlindungan Anak di Indonesia." *De Jure: Jurnal Hukum dan Syariat* 8, No. 2 (2016): 64-73, p. 69.

guidelines in determining the limits of good and bad things, but a superficial understanding and instant approach to religion often leads to mistakes in the implementation of religious teachings. Many people choose to study religion without referring to reliable sources or getting guidance from scholars with integrity and knowledge.²⁸

With regard to the hadith of Aisha's early marriage to the Prophet Muhammad, it is possible to distinguish between the elements of means and ends contained therein. Aisha's age at the time of marriage is considered a means, which can change according to the context of a particular time, place and culture. Therefore, age should not be the only benchmark for interpreting the purpose of the hadith. The main purpose of the marriage is to achieve benefit, both for the Prophet and the Muslim community as a whole. Therefore, the understanding of the hadith should focus on that goal. If marriage at an early age is considered as something that provides benefits without causing damage or harm, then it is considered reasonable. However, if marriage at an early age has the potential to cause negative impacts or harm, it should not be implemented.²⁹

If we agree that the minimum age limit is temporal and can be adjusted to the context of the times, then it is natural to further explore Aishah's physical maturity and birth readiness at the age of six in that era compared to six-year-old children in the current era. Therefore, cross-disciplinary research such as health, psychology, and other sciences are needed to provide a more holistic understanding of the matter. Applying sharia is not only limited to obeying the commands written in the text, but also paying attention to the context in which the text was stated. This is so that there is no rigidity in religious practice that could contradict the principle of Islam as a religion that is *salih li kulli zaman wa makan*.

5. Matchmaking

Matchmaking generally occurs due to customary factors, the stigma against spinsters, or parents' concerns about their children falling into promiscuity. This usually occurs through three patterns of matchmaking from parents to children. First, the mate is determined through an agreement between parents when the child is still in the womb, with consideration of the element of blood ties. Secondly, the match is decided by the parents who set up the match for the child since childhood, either with the child's permission or without their permission. Third, the bride-to-be has the freedom to choose her own life partner but must have the consent of her parents.³⁰ However, in this context, children tend to have limited rights and generally parents' decisions must be obeyed without allowing children to challenge them.

6. Pregnant outside marriage

Pregnancy outside of marriage in the community structure is considered a very shameful act not only for the family, but also for the entire community. Individuals

²⁸ Al Mas'udah. "Feminisasi Kemiskinan: Antara Tafsir Agama dan Realitas Sosial (Studi Kasus di Kecamatan Soko Kabupaten Tuban)." *Al Hikmah: Jurnal Studi Keislaman* 4, No. 1 (2014): 61-75, p. 66.

²⁹ Muhammad Muhajir. "Kontekstualisasi Hadis Pernikahan Dini di Era Kontemporer." *Jurnal Ilmiah Mahasiswa Raushan Fikir* 10, No. 1 (2021): 46-55, p. 53.

³⁰ Munawara, Ellen Meianzi Yasak, and Sulih Indra Dewi. "Budaya Pernikahan Dini Terhadap Kesetaraan Gender Masyarakat Madura." *Jurnal Ilmu Sosial dan Ilmu Politik (JISIP)* 4, No. 3 (2015): 426-431, p. 428.

involved in out-of-wedlock pregnancies are considered jinxed, and some even experience expulsion from their families and neighborhoods.³¹ This condition is seen as adultery or better known as married by accident. Maintaining virginity for women is a high moral value so that if a woman becomes pregnant but not in the bonds of marriage, then the individual concerned must be prepared to receive scorn and blasphemy from the community, especially in the family of eastern cultural communities. Pregnancy outside of marriage is a fact that is difficult to record and tends to be hidden which then often leads to abortion which is contrary to the principles of universal human rights and religious norms. This condition becomes ironic because the impact is widening to cause problems so that the role of parents in supervising their children becomes so crucial so that children do not lead to deviant behavior.

7. Worried about children falling into promiscuity

This factor is closely related to arranged marriage and pregnancy outside of marriage. The high frequency of promiscuous sex among teenagers and the increase in abortion rates are indicators that the phenomenon of promiscuity has reached an alarming level that requires in-depth thinking regarding the solution. One alternative, although not an absolute solution, is to marry off couples at an early age if they are settled in their relationship. Although both may still be in the process of education or have not reached the ideal age, formalizing the relationship through marriage is considered a preventive measure to avoid the negative impact of relationships between adolescents and the opposite sex.³² It should be noted that in some cases, marriage at an early age may occur out of compulsion, especially when parents lack an understanding of the importance of education.

8. Old maid stigma

The family's concern about the label that may be given by the community to unmarried daughters is one of the triggers to immediately marry off their children.³³ In rural communities in particular, the spinster label carries a significant stigma for a family as there is a view that it is better to be a young widow than an old maid.³⁴ The term "spinster" refers to the status of a girl who has menstruated and is old enough but has not found a life partner. Interestingly, this stigma does not apply to men. There is no term "old virgin" that will be pinned to men when they do not get married, in fact this is also a form of discrimination that is rooted silently in our society today if analyzed more deeply.

³¹ Meiliati Ligit. "Kontrol Diri dan Penyesuaian Diri Dalam Pernikahan Remaja Putri yang Menjalani Pernikahan Dini Akibat Kehamilan Pra Nikah." *Psikoborneo: Jurnal Ilmiah Psikologi* 4, No. 3 (2016): 422-431, p. 423.

³² Idzni Haidi Nurfadilah, Fenti Dewi Pertiwi, and Tika Noor Prastia. "Gambaran Pernikahan Dini Pada PUS (Pasangan Usia Subur) di Kelurahan Pasir Jaya Kecamatan Bogor Barat Tahun 2019." *Promotor* 4, No. 4 (2021): 322-328, p. 325.

³³ Heri Sunaryanto. "Analisis Sosial-Ekonomi Faktor Penyebab Perkawinan Anak di Bengkulu: Dalam Perspektif Masyarakat dan Pemerintah (Studi Kasus di Kabupaten Seluma)." *Jurnal Sosiologi Nusantara* 5, No. 1 (2019): 22-42, p. 31.

³⁴ Trisna Rosanti, Sukmawati, and Lilis Mamuroh. "Gambaran Budaya Orang Tua tentang Pernikahan Dini." *Jurnal Keperawatan BSI* 8, No. 2 (2020): 256-267, p. 264.

9. Self-will

The decision to marry at a young age is sometimes influenced by an individual's own internal factors. Adolescent girls can feel compelled to marry early due to various factors such as physical and psychological maturity, the need to fulfill the clothing aspect and sexual needs during puberty. Despite their young age, the urge to fulfill these needs can be a trigger for early marriage.³⁵ The desire of the individual concerned to marry early is usually due to already having a partner and both already feel in love with each other, so there is a desire to get married immediately regardless of age. Given that the two have been considered to understand each other, usually the parents of the person concerned also agree to marry off their child rather than the child engaging in deviant behavior. This decision can actually be considered rash because it does not take into account the long-term impact in the future after the child is married, the potential for divorce is high because basically marriage is not accompanied by sufficient provision.

Child Marriage Arrangements Under Indonesian Law

Regulations related to child marriage in Indonesia can actually be analyzed in the Marriage Law³⁶ and the Child Protection Law.³⁷ In the case of child marriage, the Marriage Law can be used as a formal reference to the context in this study. Judging from history, the rules of marriage in Indonesia are actually very plural because they still apply the division of classes.³⁸ However, over time, the regulation of marriage in Indonesia has progressed with the enactment of the Marriage Law, which has responded to the need for equitable regulation of marriage across all levels of Indonesian society.³⁹

The presence of the Marriage Law led to a comprehensive legal unification related to marriage in Indonesia. Legal regulations regarding marriage become a standard that applies uniformly to all citizens so that every individual is required to comply with applicable legal provisions including the Marriage Law.⁴⁰ It provides a solid basis for achieving legal certainty, covering aspects of family law, property management, and the

³⁵ Rima Hardianti and Nunung Nurwati. "Faktor Penyebab Terjadinya Pernikahan Dini Pada Perempuan." *Focus: Jurnal Pekerjaan Sosial* 3, No. 2 (2020): 111-120, p. 118.

³⁶ The Marriage Law refers to Law Number 1 of 1974 concerning Marriage which has been amended through Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.

³⁷ The Child Protection Law refers to Law Number 23 of 2002 concerning Child Protection, which was last amended by Law Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law.

³⁸ This division of classes is a legacy of the Dutch Colonial where there were only three written rules for Indonesian society in the pre-independence period until 1946, namely the Christian Marriage Ordinance (HOCl) which applies to indigenous Indonesians who are Christians written in Staatsblad 1933 No. 74, the Civil Code (BW) which applies to citizens of European and Chinese descent, then mixed marriage regulations written in Staatsblad 1898 No. 158. Until the end of the colonial period, the Dutch Colonial Government did not succeed in making laws containing material law on marriage that applied to all Indonesians. Meanwhile, the legal regulations on marriage for Muslims that were left behind by the Dutch Colonial Government were only in the form of formal legal regulations governing marriage procedures as contained in fiqh books authored by Muslim scholars and not made by the Dutch.

³⁹ Sirman Dahwal. *Hukum Perkawinan Beda Agama Dalam Teori dan Praktikanya di Indonesia*. Bandung: Mandar Maju, 2016, p. 146.

⁴⁰ Kiki Amaliah and Zico Junius Fernando. "Akibat Hukum Dispensasi Perkawinan Anak di Bawah Umur." *Al Imarah: Jurnal Pemerintahan dan Politik Islam* 6, No. 2 (2021): 200-217, pp. 203-204.

legal consequences of marriage.⁴¹ In addition, the content material in the Marriage Law is also regulated in such a way as to start from the principles and norms relating to the law of marriage and divorce as well as various matters relating to family life.⁴² To say that a marriage is valid according to legal provisions, it can be seen in Article 2 of the Marriage Law which states:

- (1) Perkawinan adalah **sah apabila dilakukan menurut hukum masing-masing agamanya dan kepercayaannya.**
- (2) Tiap-tiap perkawinan dicatat menurut peraturan perundang-undangan yang berlaku.⁴³

English version:

- (1) Marriage is **valid if performed according to the laws of each religion and belief.**
- (2) Every marriage shall be recorded in accordance with the applicable laws and regulations.

So, a marriage that is considered valid and recognized by the Indonesian state is a marriage that is carried out religiously and every marriage must be registered according to the applicable law.⁴⁴ In the context of child marriage, there is an age dimension that applies to both couples who want to get married. The minimum rules for the age of marriage in Indonesia itself before the changes were made can be seen in Article 7 of the Marriage Law which reads:

- (1) Perkawinan hanya diizinkan jika pihak **pria sudah mencapai umur 19 (sembilan belas) tahun dan pihak wanita sudah mencapai umur 16 (enam belas) tahun.**
- (2) Dalam hal penyimpangan terhadap ayat (1) pasal ini dapat meminta **dispensasi kepada Pengadilan atau Pejabat lain yang ditunjuk** oleh kedua orang tua pihak pria maupun pihak wanita.

English version:

- (1) Marriage is only permitted if the **man has reached the age of 19 (nineteen) years** and the **woman has reached the age of 16 (sixteen) years.**
- (2) In the event of a deviation from paragraph (1) of this article, a request for **dispensation may be made to the Court** or another official appointed by the parents of both the male and female parties.

The difference in the minimum age of marriage between men and women in the article caused polemics in Indonesian society because it was considered a form of discrimination against women. In the end, the article was challenged to the Constitutional Court because it was deemed not to guarantee legal certainty, was interpreted ambiguously, unclearly and multiple interpretations, and curbed the fulfillment of the

⁴¹ K. Wantjik Saleh. *Hukum Perkawinan Indonesia*. Jakarta: Ghalia Indonesia, 1987, p. 3.

⁴² Abdulkadir Muhammad. *Hukum Perdata Indonesia*. Bandung: Citra Aditya Bakti, 2014, p. 68.

⁴³ Article 2 of the Marriage Law.

⁴⁴ B. Teer Haar. *Asas-Asas dan Susunan Hukum Adat*. Jakarta: Pradnya Paramita, 2001, p. 206.

basic rights of citizens, resulting in harm to the constitutional rights of the petitioners.⁴⁵ At its peak, there were changes regarding the age limit for marriage between men and women so that Article 7 of the Marriage Law currently reads:

- (1) Perkawinan hanya diizinkan apabila **pria dan wanita sudah mencapai umur 19 (sembilan belas) tahun.**
- (2) Dalam hal terjadi penyimpangan terhadap ketentuan umur sebagaimana dimaksud pada ayat (1), orang tua pihak pria dan/atau orang tua pihak wanita **dapat meminta dispensasi kepada Pengadilan dengan alasan sangat mendesak disertai bukti-bukti pendukung yang cukup.**
- (3) Pemberian dispensasi oleh Pengadilan sebagaimana dimaksud pada ayat (2) wajib mendengarkan pendapat kedua belah calon mempelai yang akan melangsungkan perkawinan.⁴⁶

English version:

- (1) Marriage is only permitted if the **man and woman have reached the age of 19 (nineteen) years.**
- (2) In the event of a deviation from the age provision as referred to in paragraph (1), the parents of the male party and/or the parents of the female party **may request dispensation to the Court on the grounds of extreme urgency accompanied by sufficient supporting evidence.**
- (3) The granting of dispensation by the Court as referred to in paragraph (2) shall hear the opinions of both prospective bride and groom who will enter into marriage.

Thus, marriage is only permitted to couples who have reached the age of 19 (nineteen) for both men and women. If it does not meet the specified age, then it can automatically be said to be a child marriage. Unfortunately, the age limit of a child in the Marriage Law is different from the age limit of a child in the Child Protection Law, which creates its own dilemma. Actually, the minimum age of marriage in the Child Protection Law is not explicitly stated, but the term “child” in the Child Protection Law is someone under the age of 18 (eighteen) years.⁴⁷ From this it can be seen that the age limit of a child in the two regulations is different. However, the spirit of child protection can be seen in the Child Protection Law and is manifested as a form of responsibility from parents, which in Article 26 of the Child Protection Law reads:

- (1) Orang tua berkewajiban dan bertanggung jawab untuk:
 - a. mengasuh, memelihara, mendidik, dan melindungi anak;
 - b. menumbuhkembangkan anak sesuai dengan kemampuan, bakat, dan minatnya
 - c. **mencegah terjadinya perkawinan pada usia anak;** dan

⁴⁵ Decision of the Constitutional Court of the Republic of Indonesia Number 22/PUU-XV/2017 on the Examination of Law Number 1 of 1974 concerning Marriage Against the Constitution of the Republic of Indonesia Year 1945.

⁴⁶ Article 7 of the Marriage Law.

⁴⁷ Article 1 number 1 of the Child Protection Law.

- d. memberikan pendidikan karakter dan penanaman nilai budi pekerti pada anak.⁴⁸

English version:

- (1) Parents are obligated and responsible for:
- a. nurture, maintain, educate, and protect the child;
 - b. develop children in accordance with their abilities, talents, and interests);
 - c. **preventing child marriage**; and
 - d. providing character education and instilling ethical values in children.

In its development, child marriage is also a form of sexual violence that has been accommodated and regulated in the Sexual Violence Crime Act.⁴⁹ What is meant by “child” in the Sexual Violence Crime Act is also the same as in the Child Protection Law, namely someone who is not yet 18 (eighteen) years old.⁵⁰ The threat of child marriage can be seen in Article 10 of the Sexual Violence Crime Act which reads:

- (1) Setiap orang secara melawan hukum memaksa, menempatkan seseorang di bawah kekuasaannya atau orang lain, atau menyalahgunakan kekuasaannya untuk melakukan atau membiarkan dilakukan perkawinan dengannya atau dengan orang lain, dipidana karena pemaksaan perkawinan, dengan pidana penjara paling lama 9 (sembilan) tahun dan/atau pidana denda paling banyak Rp 200.000.000,00 (dua ratus juta rupiah).
- (2) Termasuk pemaksaan perkawinan sebagaimana dimaksud pada ayat (1):
- a. **perkawinan anak**;
 - b. pemaksaan perkawinan dengan mengatasnamakan praktik budaya; atau
 - c. pemaksaan perkawinan korban dengan pelaku perkosaan.⁵¹

English version:

- (1) Any person who unlawfully forces, places a person under his or her authority or another person, or abuses his or her authority to enter into or to allow a marriage with him or with another person, shall be punished for coercion of marriage, with imprisonment of 9 (nine) years and/or a maximum fine of Rp 200,000,000.00 (two hundred million rupiah).
- (2) Forced marriage as referred to in paragraph (1) includes:
- a. **child marriage**;
 - b. forced marriage in the name of cultural practices; or
 - c. forced marriage of the victim with the perpetrator of rape.

According to Agustina Erni, Deputy for the Fulfillment of Children’s Rights at the Ministry of Women’s Empowerment and Child Protection of the Republic of Indonesia, the passing of the Sexual Violence Crime Act is expected to be a progressive step to

⁴⁸ Article 26 paragraph (1) of the Child Protection Law.

⁴⁹ The Sexual Violence Crime Act refers to Law Number 12 of 2022 concerning on the Crime of Sexual Violence.

⁵⁰ Article 1 number 5 of the Sexual Violence Crime Act.

⁵¹ Article 10 of the Sexual Violence Crime Act.

prevent the increase in child marriage in Indonesia.⁵² Child marriage has the potential to create significant negative impacts such as increased maternal health risks due to childbirth at a young age, stunting problems in children, and increased poverty rates. This situation will definitely hinder the achievement of the targets listed in the SDGs, RPJMN, and the National Strategy for Child Marriage Prevention. Thus, efforts to prevent child marriage through legal instruments made by the state are quite visible from the several laws mentioned above. From these regulations, the dilemma that arises from regulating child marriage in Indonesia is the disharmony of child age limits in several regulations in Indonesia. Regarding this, it will be continued in the next discussion by trying to see the rules of child marriage in other countries, namely Malaysia.

Child Marriage Arrangements Under Malaysian Law

Administratively, Malaysia is divided into thirteen states (called Negeri)⁵³ and three union territories (called Wilayah Persekutuan) is Kuala Lumpur, Labuan, and Putrajaya which are divided into two geographies between Peninsular Malaysia (West Malaysia) located on the Asian mainland and East Malaysia located on the island of Borneo. As mandated by the Federal Constitution of Malaysia,⁵⁴ Islamic family law in Malaysia is the domain of the Negeri (respective states).⁵⁵ Therefore, the provisions of Islamic family law in the form of laws and regulations are regulated not through legislation at the Federation level that applies nationally, but are products of State legislation and apply to Muslims in the State concerned.

Historically, after Malaysia's independence, there was a tendency to translate Islamic family law as stated in the fiqh literature to be in line with the Malaysian context, although the reference to the Syafii maddhab was still very strong. The first state to do so was Selangor, which initiated the formation of the Enakmen Pentadbiran Agama Islam, which was then followed by other states. This regulation is intended as a legal basis for the administration of Muslims and is a normative reference related to family matters based on Islamic law.⁵⁶ In this period, the regulation of Islamic family law was included as part of the Enakmen Pentadbiran Agama Islam, so it was still very minimal.⁵⁷ The variety of Islamic family law arrangements under Enakmen Pentadbiran Agama Islam in Negeri and Wilayah Persekutuan resulted in inconsistencies in legal provisions between jurisdictions.

⁵² Yulianto, A. (2022). *UU TPKS Langkah Progresif Cegah Perkawinan Anak, Benarkah?*. Available from <https://news.republika.co.id/berita/ralg23396/uu-tpks-langkah-progresif-cegah-perkawinan-anak-benarkah>, accessed on December 4, 2023.

⁵³ The thirteen states in Malaysia (called Negeri) include Pahang, Perak, Terengganu, Perlis, Selangor, Negeri Sembilan, Johor, Kelantan, Kedah, Pulau Pinang, Melaka, Sabah, and Sarawak.

⁵⁴ The Federal Constitution of Malaysia refers to the Perlembagaan Persekutuan Malaysia, the supreme law of Malaysia (the equivalent of the 1945 Constitution of the Republic of Indonesia in Indonesia), which is based on two earlier documents, the 1948 Treaty of Persekutuan Tanah Melayu and the 1957 Perlembagaan Kemerdekaan.

⁵⁵ Jadual Kesembilan Senarai II Federal Constitution of Malaysia.

⁵⁶ Ahmad Ibrahim. *Undang-Undang Keluarga Islam di Malaysia*. Kuala Lumpur: Lexis Nexis, 1999, pp. 6-7.

⁵⁷ Raihanah Abdullah. *Undang-Undang Keluarga Islam di Malaysia: Satu Sorotan Literatur dalam Mahkamah Syariah di Malaysia: Pencapaian dan Cabaran*. Kuala Lumpur: Penerbit University of Malaya, 2005, pp. 127-129.

The early 1980s marked the era of Islamic family law reform. The government formed a Committee (Jawatankuasa) headed by Tengku Zaid which was tasked with drafting an Islamic Family Law that could be applied throughout the country. This draft was approved in the Majlis Raja-Raja.⁵⁸ Basically, the method of formulating the draft was not different from that generally used in the modern Muslim world, namely *takbayyur* and *talfiq*. In addition to codifying Islamic family law independent of the Enakmen Pentadbiran, the main objective of this effort was also to update the provisions of traditional Islamic family law. Although the general orientation was to the Syafii madhhab, other madhhabs were also referenced in some instances.

Royal rulers in Kelantan, Kedah and Wilayah Persekutuan formed committees to investigate the contents of the draft. The desire for unification of Islamic family law was ultimately not achieved as each state made its own assessment of the contents of the draft in accordance with its religious legal views. In Kuala Lumpur, a committee was formed consisting of the Mufti, the Chief Justice, officials from the Department of Religious Affairs, and two academics from the University of Malaya as well as representatives from UMNO's women's wing. It was the outcome of this committee that was later passed into the Akta Undang-Undang Keluarga Islam (Wilayah Persekutuan) 1984 by Akta 303.⁵⁹ Apart from the Akta Undang-Undang Keluarga Islam (Wilayah Persekutuan) 1984, there were two other legal products that were also passed in the early period of Islamic family law reform in the early 1980s, namely the Enakmen Undang-Undang Keluarga Islam (Negeri Kelantan) 1983 and the Enakmen Undang-Undang Keluarga Islam (Negeri Kedah) 1984. The other states of Melaka, Johor, Negeri Sembilan, Pahang, Pulau Pinang, Perak, Perlis, Sabah, Serawak, Selangor and Terengganu then followed suit and took these Akta and Enakmen as models.⁶⁰

In terms of respect for human rights, codification in the form of this special enakmen provides legal certainty, especially for women against their rights. This condition is of course different when the legal provisions are still mentioned in general terms only in Enakmen Pentadbiran so that the details are left to the authority of traditional fiqh which is very vulnerable to diversity (uncertainty).⁶¹ Moreover, the codification of Islamic family law in the Akta Undang-Undang Keluarga Islam (Wilayah Persekutuan) 1984 is internationally recognized as one of the most progressive codifications of Islamic family law in the Muslim world regarding the rights and protection of women.⁶²

There are significant differences between the Akta Undang-Undang Keluarga Islam (Wilayah Persekutuan) 1984 and the Enakmen Undang-Undang Keluarga Islam (Negeri

⁵⁸ Ahmad Ibrahim. *Perkembangan Kodifikasi Hukum Islam di Malaysia dalam Perkembangan Mutakhir Hukum Islam di Asia Tenggara: Studi Kasus Hukum Keluarga dan Pengkodifikasiannya*. Bandung: Mizan, 1993, pp. 104-105.

⁵⁹ Undang-Undang Keluarga Islam (Wilayah Persekutuan) 1984 was Royal Assent (Diraja) on June 27, 1984 and published in the Gazette (Warta) on June 28, 1984. This act came into force (berkuatkuasa) on April 29, 1987.

⁶⁰ Abdul Monir Yaacob. *Pengkanunan Undang-Undang Islam di Malaysia dalam Pelaksanaan Hukum Syarak di Malaysia*. Johor: Kerajaan Negeri Johor, 2000, p. 69.

⁶¹ Mehrun Siraj. "Women and the Law: Significant Developments in Malaysia." *Law and Society Review* 28, No. 3 (1994): 561-572, p. 565.

⁶² Zainah Anwar and Jana S. Rumminger. "Justice and Equality in Muslim Family Laws: Challenges, Possibilities, and Strategies for Reform." *Washington and Lee Law Review* 64, No. 4 (2007): 1529-1549, p. 1533.

Kelantan) 1983 and Enakmen Undang-Undang Keluarga Islam (Negeri Kedah) 1984. One of the differences, for example, relates to the marriage guardian. In Wilayah Persekutuan, the validity of marriage requires the consent of the wife-to-be as well as the marriage guardian, and if the *nasab* guardian is absent or unwilling, a judge can replace him. Meanwhile, in Negeri Kelantan and Kedah, the existence of a *mujbir* guardian for underage women as found in the Syafii madhhab, is recognized and regulated. This arrangement has been strongly criticized by women's organizations and academics because it is considered to have established discrimination against women.⁶³

Various efforts to homogenize the regulation of Islamic family law continue to be made. The Jawatankuasa (Committee) Teknikal Undang-Undang Syarak and Sivill was formed on May 6, 1988 and chaired by Prof. Ahmad Ibrahim. This committee was tasked with reviewing existing laws and adjusting them to Islamic law as well as formulating draft laws that could be used by the Court. The committee has formulated some proposed amendments to some sections or clauses in the existing Islamic Family Law in order to harmonize the rules in various countries. Thus, although formally there is no unification of the Islamic Family Law, efforts through amendments to clauses that are not equivalent in the State Enactments have been successful.⁶⁴

The 2000s marked a new phase in the reform of Islamic family law in Malaysia. As a result of the 176th Mesyuarat Majlis Raja-Raja on August 1, 1997 and the 188th Mesyuarat on March 22, 2001, it was agreed to uniformize the Islamic Family Law. Almost all of the existing Islamic Family Laws have undergone significant changes towards harmonization and material unity. The Akta Undang-Undang Keluarga Islam (Wilayah Persekutuan) 1984 became the model referred to for this harmonization effort. By 2005, efforts towards uniformity in Islamic family law had almost been achieved. Changes and uniformity were made to better protect the interests of women nationally, for example in relation to joint property and polygamy.

The states that have passed the amendment include Negeri Serawak through Ordinance 43 of 2001, Negeri Kelantan through Enakmen 6 of 2002, Negeri Melaka through Enakmen 12 of 2002, Negeri Sembilan through Enakmen 11 of 2003, Negeri Selangor through Enakmen 2 of 2003, Negeri Johor through Enakmen 17 of 2003, Negeri Pulau Pinang through Enakmen 3 of 2004, Negeri Perak through Enakmen 6 of 2004, Negeri Sabah through Enakmen 8 of 2004, Negeri Pahang through Enakmen 3 of 2005. Subsequently after 2005, other states followed suit, namely Negeri Perlis through Enakmen 7 of 2006 and Negeri Kedah through Enakmen 11 of 2008.⁶⁵ The most recent state to ratify the amendment to the Enakmen Pentadbiran is Negeri Terengganu through Enakmen 1 of 2017.

From the explanation that has been comprehensively conveyed, the reference to family law in Malaysia is Akta (for Wilayah Persekutuan), Ordinan (for Negeri Serawak),

⁶³ Zanariah Noor. "Gender Justice And Islamic Family Law Reform In Malaysia." *Kajian Malaysia* 25, No. 2 (2007): 121-156, pp. 141-142.

⁶⁴ Ahmad Ibrahim. *Recents Development in the Administration of Islamic Law in Malaysia* dalam *Yearbook of Islamic and Middle Eastern Law*. London: Kluwer Law International, 1997, p. 122.

⁶⁵ Ahmad Rofii. "Globalisasi HAM dan Hukum Keluarga Islam di Malaysia." *Al-Manahij: Jurnal Kajian Hukum Islam* 9, No. 2 (2015): 303-318, p. 310.

and Enakmen (for Negeri other than Negeri Serawak) where these rules only apply to Muslims in Malaysia. Unlike the Muslims whose rules are left to the respective Negeri and Wilayah Persekutuan, for the non-Muslims there is one rule at the Federation level which is enforced nationally namely the Akta Membaharui Undang-Undang (Perkawinan dan Perceraian) 1976 which was enacted through Akta 164. This difference occurs because Malaysia declared Islam as the official state religion in its constitution, but it does not mean that other religions are not allowed. This can be seen in Section 3 of the Federal Constitution of Malaysia which reads:

- (1) Islam ialah agama bagi Persekutuan; tetapi agama-agama lain boleh diamalkan dengan aman dan damai di mana-mana bahagian Persekutuan.⁶⁶

English version:

- (1) Islam is the religion of the Association; but other religions may be practiced safely and peacefully in any part of the Association.

To facilitate the depiction of all family rules in Malaysia for both Muslims and non-Muslims, in this study a diagram and table will be made of all provisions in Malaysia as below:

⁶⁶ Perkara 3 (1) Federal Constitution of Malaysia.

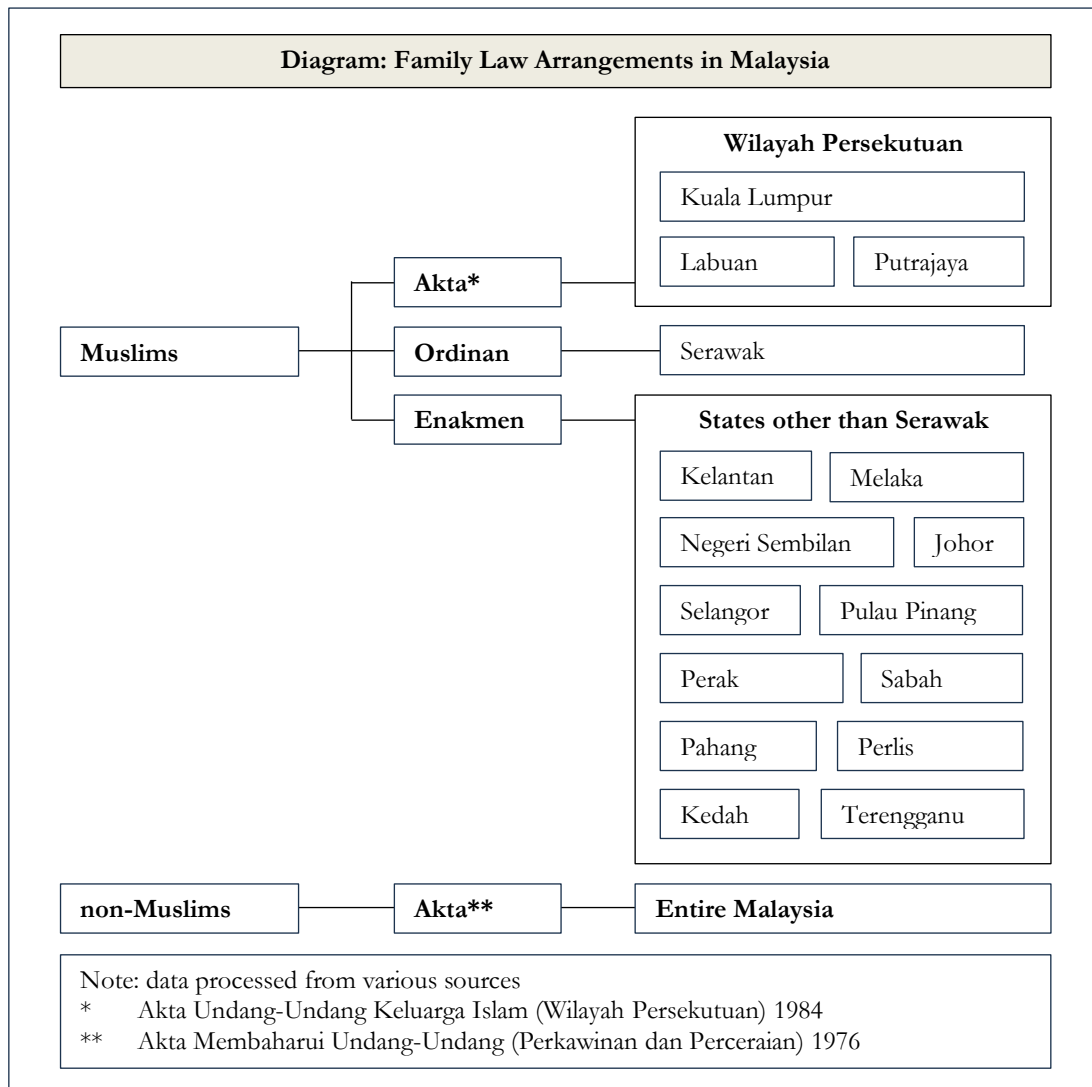


Table 1: Islamic Family Law Regulations in Wilayah Persekutuan Malaysia

Wilayah Persekutuan	Akta	Regulation Name
Kuala Lumpur	Akta 303	Akta Undang-Undang Keluarga Islam (Wilayah Persekutuan) 1984
Labuan	Akta 303	Akta Undang-Undang Keluarga Islam (Wilayah Persekutuan) 1984
Putrajaya	Akta 303	Akta Undang-Undang Keluarga Islam (Wilayah Persekutuan) 1984

Table 2: Islamic Family Law Regulations in Malaysian States

States (Negeri)	Ordinan/Enakmen	Regulation Name
Serawak	Ordinan 43	Undang-Undang Keluarga Islam (Negeri Serawak) 2001
Kelantan	Enakmen 6	Undang-Undang Keluarga Islam (Negeri Kelantan) 2002
Melaka	Enakmen 12	Undang-Undang Keluarga Islam (Negeri Melaka) 2002
Negeri Sembilan	Enakmen 11	Undang-Undang Keluarga Islam (Negeri Sembilan) 2003
Selangor	Enakmen 2	Undang-Undang Keluarga Islam (Negeri Selangor) 2003
Johor	Enakmen 17	Undang-Undang Keluarga Islam (Negeri Johor) 2003
Pulau Pinang	Enakmen 3	Undang-Undang Keluarga Islam (Negeri Pulau Pinang) 2004
Perak	Enakmen 6	Undang-Undang Keluarga Islam (Negeri Perak) 2004
Sabah	Enakmen 8	Undang-Undang Keluarga Islam (Negeri Sabah) 2004
Pahang	Enakmen 3	Undang-Undang Keluarga Islam (Negeri Pahang) 2005
Perlis	Enakmen 7	Undang-Undang Keluarga Islam (Negeri Perlis) 2006
Kedah	Enakmen 11	Undang-Undang Keluarga Islam (Negeri Kedah) 2008
Terengganu	Enakmen 1	Undang-Undang Keluarga Islam (Negeri Terengganu) 2017

In the context of this study, all rules applicable to Muslims will be used the term “Islamic Family Law of Malaysia” which includes the entire Islamic Family Law applicable in the Wilayah Persekutuan⁶⁷ as well as all Ordinan⁶⁸ and Enakmen⁶⁹ Undang-Undang Keluarga Islam applicable in all states of Malaysia.⁷⁰ Furthermore, for the rules applicable

⁶⁷ Referring to the Akta Undang-Undang Keluarga Islam (Wilayah Persekutuan) 1984.

⁶⁸ Referring to the Ordinan Undang-Undang Keluarga Islam (Negeri Serawak) 2001.

⁶⁹ Referring to the Enakmen Undang-Undang Keluarga Islam in all states of Malaysia.

⁷⁰ The use of the term “Islamic Family Law of Malaysia” itself is only used in this study for ease of mention because the substance related to marriage regulated in all these rules has been uniformed in such

to non-Muslims, the term “Law Reform (Marriage and Divorce) Act of Malaysia” will be used, which is enforced nationally at the Federation level.⁷¹ In terms of marriage being considered valid under Malaysian law, for Muslims it can be seen in Seksyen 8 of the Islamic Family Law of Malaysia which reads:

8. Umur minimum untuk perkahwinan

Tiada sesuatu perkahwinan boleh diakadnikahkan di bawah Akta/Ordinan/Enakmen ini jika lelaki itu berumur kurang daripada lapan belas tahun atau perempuan itu berumur kurang daripada enam belas tahun kecuali jika Hakim Syarie telah memberikan kebenarannya secara bertulis dalam hal keadaan tertentu.⁷²

English version:

8. Minimum age for marriage

No marriage shall be solemnized under this Akta/Ordinan/Enakmen if the man is less than eighteen years of age or the woman is less than sixteen years of age unless the Sharie Judge has given his consent in writing in certain circumstances.

From this article, we can see that marriage can be solemnized for a man who has reached the age of eighteen years and a woman who has reached the age of sixteen years according to Malaysian law either in the Wilayah Persekutuan or in all states of Malaysia Malaysia for people who are Muslims. This provision can also be overridden by a “written truth (kebenaran bertulis)” issued by a Syarie Judge, which is a kind of marriage dispensation applied by Indonesia. As for non-Muslims, it can be seen in Section 10 of the Law Reform (Marriage and Divorce) Act of Malaysia which reads:

10. Tak sah perkahwinan jika salah satu pihak berumur di bawah umur minimum perkahwinan

Sesuatu perkahwinan yang berupa sebagai diupacarakan dalam Malaysia adalah tak sah jika pada tarikh perkahwinan itu salah satu daripada pihak-pihak berumur di bawah lapan belas tahun melainkan jika, berkenaan dengan seseorang perempuan yang telah genap umur enam belas tahun, upacara perkahwinan itu telah dibenarkan oleh suatu lesen yang diberi oleh Ketua Menteri di bawah subseksyen 21(2).⁷³

English version:

10. A marriage is not valid if one of the parties is below the minimum age for marriage

A marriage intended to be solemnized in Malaysia is invalid if at the date of the marriage one of the parties is under the age of eighteen years but if, in respect of a woman who has attained the age of sixteen years, the marriage ceremony has been authorized by a license granted by the Chief Minister under Subsection 21(2).

From this article it can be seen that any marriage will be void if one of the parties is under the age of eighteen. There is however an exception to this law which is that child

a way by the Malaysian Government, so that there is no confusion or overlap between each rule throughout Malaysia both in the Wilayah Persekutuan and in all states of Malaysia.

⁷¹ Referring to the Akta Membaharui Undang-Undang (Perkawinan dan Perceraian) 1976.

⁷² Seksyen 8 Islamic Family Law of Malaysia.

⁷³ Seksyen 10 Law Reform (Marriage and Divorce) Act of Malaysia.

marriage is allowed in circumstances where a girl aged sixteen years or above wishes to marry if the marriage is authorized by the Chief Minister of the State concerned. The figure of eighteen years is also synchronized and aligned with the existing child protection regulations in Malaysia namely the Akta Kanak-Kanak 2001 (Akta 611) which combines four regulations into one including Akta Mahkamah Juvana 1947 (Akta 90), Akta Perlindungan Kanak-Kanak 1991 (Akta 468), Akta Perlindungan Wanita dan Gadis 1973 (Akta 106), and Akta Pusat Jagaan Kanak-Kanak 1984.⁷⁴ Seksyen 2 Akta Kanak-Kanak 2001 states that:

2. (1) Dalam Akta ini, melainkan jika konteksnya menghendaki makna yang lain ----
 “**kanak-kanak**” ----
 a) ertinya **seseorang yang di bawah umur lapan belas tahun.**⁷⁵

English version:

2. (1) In this Akta, but if the context requires a different meaning ----
 “**child**” ----
 (a) means a **person under the age of eighteen years.**

The article in the Akta Kanak-Kanak 2001 has stated that a child is someone who is under the age of eighteen. In another regulation, Malaysia also has the Akta Umur Dewasa 1971 (Akta 21) where a child is considered an adult when he or she turns eighteen years old. This act stands alone and is not incorporated in the Akta Kanak-Kanak 2001 as the Akta Kanak-Kanak 2001 is the regulation of children’s rights issues in Malaysia which is the result of the unification of several laws relating to the care, protection, and restoration of children and is intended for cases relating to children. Seksyen 2 Akta Umur Dewasa 1971 reads:

2. Umur dewasa

Tertakluk kepada seksyen 4, umur belum dewasa bagi semua lelaki dan perempuan ialah dan adalah terhad kepada **lapan belas tahun** dan tiap-tiap lelaki dan perempuan yang mencapai umur itu ialah berumur dewasa di Malaysia.⁷⁶

English version:

2. Age of maturity

Pursuant to section 4, the age of majority for all males and females was and is capped at eighteen years of age and every male and female who attains that age is a mature adult in Malaysia.

Thus, the age of a child in Malaysia in several regulations such as the Akta Kanak-Kanak 2001, Akta Umur Dewasa 1971, Law Reform (Marriage and Divorce) Act of Malaysia, and the Islamic Family Law of Malaysia is eighteen years old and synchronized with each other. Although for women themselves in Malaysian family law (Law Reform

⁷⁴ Iman Jauhari. “Perbandingan Sistem Hukum Perlindungan Anak Antara Indonesia dan Malaysia.” *Aisy-Syir’ab: Jurnal Ilmu Syari’ab dan Hukum* 47, No. 2 (2013): 611-645, p. 641.

⁷⁵ Seksyen 2 Akta Kanak-Kanak 2001.

⁷⁶ Seksyen 2 Akta Umur Dewasa 1971.

(Marriage and Divorce) Act of Malaysia and Islamic Family Law of Malaysia) the age of majority is sixteen years old. The following is a table to make it easier to explain this:

Table 3: Childhood Adulthood Rates in Several Regulations in Malaysia

Regulation	Man	Woman
Islamic Family Law of Malaysia	18 years	16 years
Law Reform (Marriage and Divorce) Act of Malaysia	18 years	16 years
Akta Kanak Kanak 2001	18 years	18 years
Akta Umur Dewasa 1971	18 years	18 years

Positive Inspiration from Malaysia's Child Marriage Policy Regulations that Indonesia Can Adopt

From the previous explanation regarding the regulation of child marriage in Indonesia and Malaysia, a comparison can be drawn of the regulation of child marriage in Indonesia and Malaysia with a detailed explanation in the following table:

Table 4: Comparison of Marriage Rules between Indonesia and Malaysia

Object of Comparison	Indonesia	Malaysia
Rules regarding marriage	Marriage Law	<ol style="list-style-type: none"> For Muslims, the Islamic Family Law of Malaysia applies For non-Muslims, the Law Reform (Marriage and Divorce) Act of Malaysia applies
Enforceability of rules	Applicable nationwide because Indonesia is not a federal state	<ol style="list-style-type: none"> For those who are Muslims, they follow the rules in each State For non-Muslims applies nationwide across Malaysia
Age at which men can marry	19 years	18 years
Age at which women can marry	19 years	16 years
Application of marriage dispensation	Apply	Apply
Rules regarding children	Child Protection Law	Akta Kanak-Kanak 2001 and Akta Umur Dewasa 1971

Synchronize the age of majority of children in marriage laws and child laws	Different disharmonized	so	No difference (synchronized)
Classifying child marriage as a criminal offense	Classified as a crime of sexual violence in the Sexual Violence Crime Act		Not classified as a criminal offense
Sanctions for child marriage	Imprisonment for a maximum period of 9 (nine) years and/or a maximum fine of Rp 200,000,000.00 (two hundred million rupiah)		There are no sanctions because child marriage is not categorized as a criminal offense

From the table above, we can analyze the similarities and differences in child marriage arrangements in Indonesia and Malaysia. The similarity lies in the application of marriage dispensation. Meanwhile, the difference can be seen from Indonesia, which applies the Marriage Law nationally, while Malaysia divides the application of marriage rules for Muslims and non-Muslims. Because Malaysia is a federal state, marriage rules for people who are Muslims are left to each State while for people who are not Muslims, one national rule is applied at the Federation level. Furthermore, there is also a difference in the age at which children can be married. Indonesia limits the same age for men and women to nineteen years old while Malaysia applies a difference, for men the age is eighteen years old and for women the age is sixteen years old.

The most visible difference between the two is the classification of child marriage as a criminal offense. Indonesia classifies child marriage as a criminal offense of sexual violence through the Sexual Violence Crimes Act while Malaysia does not classify child marriage as a criminal offense. Because Indonesia classifies child marriage as a criminal offense, there are legal sanctions that threaten it. From the comparative study that has been conducted, the positive value of child marriage regulations in Malaysia that can be adopted is the synchronization of the age of adulthood of children that does not differ between the rules regarding marriage and the rules regarding children in Malaysia. Although in some aspects, Indonesia is better in its regulations, the absence of clashing rules in Malaysia is a plus point that makes Malaysia ultimately not overlapping rules. Considering that Malaysia is a federal country where each State has its own regulations, it would actually make Malaysia a mess if the provisions imposed vary from State to State, especially in the context of child marriage.

Especially when viewed from international legal instruments contained in the Convention on the Rights of the Child. Article 1 of the Convention on the Rights of the Child states that children are all persons under the age of eighteen, unless otherwise

determined by the laws of a country.⁷⁷ The figure of eighteen years does not absolutely have to be followed by the state, but in fact this is not reflected in the Marriage Law while the Child Protection Law has adopted this figure. It would be better if the existing laws do not clash with each other like Malaysia considering that both Indonesia and Malaysia have ratified the Convention on the Rights of the Child.⁷⁸

IV. CONCLUSION

Based on the discussion that has been presented, it can be concluded that the factors that cause child marriage include: economic conditions (poverty); low education; community culture (customs); misinterpretation of religion; arranged marriage; pregnancy outside of marriage; fear that children will fall into promiscuity; the stigma of old virgins; and self-will. The nine factors are actually interrelated between one factor and another and influence each other.

The next conclusion regarding the regulation of child marriage in Indonesia contained in the Marriage Law regulates the age of adulthood of a child which is different from the Child Protection Law where the Marriage Law considers that the age of adulthood of a child is nineteen years old to be allowed to marry while the Child Protection Law states that a child is someone under the age of eighteen which creates disharmony of norms. To open up an assessment from a different perspective, the regulation of child marriage in Indonesia was conducted a comparative study with Malaysia. From the results that have been obtained, the similarity between the regulation of child marriage in Indonesia and Malaysia lies in the application of marriage dispensation where the two countries both apply it. Meanwhile, the difference can be seen from Indonesia applying the Marriage Law nationally while Malaysia divides the application of marriage rules for Muslims and non-Muslims.

Furthermore, there are also differences in the age at which children can be married. Indonesia limits the age of marriage to nineteen years old for both men and women while Malaysia is different, with eighteen years old for men and sixteen years old for women. The most visible difference between the two is in the classification of child marriage as a criminal offense. Indonesia defines child marriage as a criminal offense of sexual violence through the Sexual Violence Crimes Act while Malaysia does not classify child marriage as a criminal offense. From the comparative study that has been conducted, the positive value of the child marriage regulation in Malaysia that can be adopted by Indonesia is the synchronization of the age of adulthood that does not differ between the rules regarding marriage and the rules regarding children in Malaysia where this will also show that the existing rules regarding the age of adulthood of children will also be in line with the Convention on the Rights of the Child that has been ratified by Indonesia.

⁷⁷ Article 1 United Nations Convention on the Rights of the Child.

⁷⁸ Indonesia ratified the United Nations Convention on the Rights of the Child through Presidential Decree Number 36 of 1990 on the Ratification of the Convention on the Rights of the Child.

SUGGESTIONS

To prevent and reduce child marriage as much as possible, some efforts that can be suggested from the community side include:

1. Raising children's awareness about the role of marriage and its impact on their lives through education and conveying information about children's rights and the consequences of marriage.
2. Developing attitudes and norms by teaching children about good values and norms in dealing with child marriage such as compulsory education and anticipating child marriage.
3. Building and strengthening an enabling environment to prevent child marriage including families, social/community organizations, schools, and pesantren.
4. Conduct multi-stakeholder coordination and synergy in preventing child marriage, including involving local government and community elements.
5. Delivering training and education on children's roles and responsibilities in dealing with child marriage, as well as teaching contraceptive methods and interpersonal communication.

In addition, there is also the role of the government in efforts to prevent child marriage with several things, namely:

1. Coordinate and synchronize with local governments and communities to prevent child marriage.
2. Regulate and strengthen regulations and institutional and stakeholder coordination to prevent child marriage including strengthening the institutional capacity of religious courts, religious affairs offices, and education units.
3. Encourage integrated programs such as the National Strategy for the Prevention of Child Marriage (Stranas PPA), the National Action Plan for Improving the Welfare of School-Age Children and Adolescents (RAN-PIJAR), and Holistic-Integrative Early Childhood Development (PAUD-HI) to make an important contribution to the realization of Indonesia Deserves Children (IDOLA) in 2030..

In efforts to prevent child marriage, it is important to involve various parties, such as local government and community elements, and adapt strategies to the local context and local communities.

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