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From Vows to Misery: Unveiling the
Legal Struggle and Human Rights
Dimensions Against Child Marriage
in Indonesia

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Summary

This thesis, “From Vows to Misery: Unveiling the Legal Struggle and Human Rights Dimensions Against Child Marriage in Indonesia,” aims to investigate how international human rights law (IHRL) could contribute to the effective prevention and eradication of child marriage in Indonesia. This study will explore the underlying reasons and significant factors contributing to the prevalence of child marriage in the country while also scrutinising the Indonesian legal landscape to identify any misalignments with international human rights principles.

Studying this topic in Indonesia is crucial due to the significant human rights implications of child marriage. Child marriage poses a risk to the physical, emotional, and educational well-being of children, perpetuating cycles of poverty and inequality. Understanding the legal landscape and its alignment with international human rights standards is essential for effective prevention and eradication efforts.

The research employs doctrinal legal methods, analysing legal materials such as statutes, cases, regulations, and legal literature. This systematic approach comprehensively analyses and evaluates IHRL and the Indonesian legal landscape. Both primary sources (international and Indonesian law) and secondary sources (academic literature, government reports, NGO reports, etc) are utilised to support the study.

In examining the alignment of the Indonesian legal framework with IHRL in addressing child marriage, the Indonesian legal framework aligns with international human rights principles to some degree. While Indonesia has ratified several international human rights treaties, the Indonesian laws frequently fall short of international standards by allowing exceptions for child marriage under certain circumstances. In addition, weak enforcement mechanisms, regional regulations, customary practices, and socio-cultural barriers make it challenging to implement current legislation.

As a result, the thesis offers policy recommendations to enhance domestic protection against child marriage and ensure better compliance with IHRL. The thesis’s holistic approach intends to contribute to the effective prevention and elimination of child marriage in Indonesia, ultimately promoting children’s rights and well-being.

Preface

Growing up in a small village in Indonesia, I was exposed to the realities faced by girls and women due to deeply rooted traditional gender roles and patriarchal systems. Society places only limited value on girls beyond their roles as wives and mothers. The imbalance of power between men and women not only limits girls' and women's ability to make decisions but also hinders their access to education, health services, and financial opportunities.

Motivated by the desire to address these systemic issues, I began contemplating myself to contribute to a more equitable society. I started my professional career at the Ministry of State Secretariat of the Republic of Indonesia. By working within the chief executive power, I believe I can have a significant impact on society. As a young expert legal analyst, I am responsible for providing legal opinions to the President of the Republic of Indonesia, especially regarding human rights issues in Indonesia. Apart from that, I am also actively involved in formulating government regulations and policies to overcome these issues. Recognising these challenges, I am committed to improving my skills and knowledge through further education. Pursuing a master's degree is not just a personal ambition but an important step to empower myself to contribute more effectively to societal change.

Finally, I would like to express my gratitude to the Ministry of State of Secretariat of the Republic of Indonesia, the Indonesia Endowment Fund for Education (LPDP), and Lund University for their support and belief in my potential to pursue this life-changing opportunity.

I owe a special gratitude to my supervisor, Anna Nilsson, for her insightful notes and valuable advice. This thesis would not have reached its conclusion without her support throughout the process.

In the journey of my study, there were many moments of struggle and doubt. However, throughout the dark days, there were always lights: my wonderful classmates and my Indonesian friends. Thank you guys for making every day one to remember.

I am grateful to my mom, dad, and brothers for their endless support, for lifting me up, for bringing me this far, and for making me the person I am today.

Lastly, but most importantly, I would like to thank my son, Farand, my only reason why even in times of confusion I understand and in moments of fear I continue to fight. Mama loves you so much.

Lund, 15 May 2024

Kartika Andiani

Abbreviations

BPS	Central Agency of Statistics (Badan Pusat Statistik)
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women 18 December 1979
Child Protection Law	Law Number 23 of 2002 as amended by Law Number 35 of 2014 and Law Number 17 of 2016 concerning Child Protection
CRC	Convention on the Rights of the Child 20 November 1989
HIV/AIDS	Human Immunodeficiency Virus/ Acquired Immunodeficiency Syndrome
ICCPR	The International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights 16 December 1966
IHRL	International Human Rights Law
Indonesian Constitution	The 1945 Constitution of the Republic of Indonesia
Marriage Law	Law No. 1 of 1974 as amended by Law No. 16 of 2019 concerning Marriage
NGO	Non-governmental Organization
UDHR	Universal Declaration of Human Rights 10 December 1948
UN	United Nation
UNFPA	United Nations Population Fund
UNGA	United Nations General Assembly
UNICEF	United Nations International Children's Emergency Fund

1 Introduction

1.1 Background and Problem

*Approximately 650 million girls and women are married before age 18, and if this trend continues, an additional 150 million girls will be married as children by 2030.*¹

Child marriage remains an ingrained social problem throughout the world, which has significant consequences for the rights, well-being and future of millions of children, especially girls.² Child marriage is considered a global issue that goes across countries, cultures, religions, and ethnicities.³ Indonesia is one of the countries where child marriage is still prevalent.⁴ This is influenced by Indonesia's background as one of the most significant multicultural countries in the world, as observed from Indonesia's socio-cultural or geographical situation, which is complex, diverse, and enormous.⁵

Despite persistent efforts to eradicate the practice, child marriage remains prevalent in Indonesia, posing significant challenges to the country's goals for human rights and socioeconomic development.⁶ UNICEF data ranks Indonesia eighth in the world and second highest in Southeast Asia regarding the percentage of marriages in which at least one of the spouses is under 18.⁷ Furthermore, child marriage rates in Indonesia appear to be slow or stagnant. According to data from the Central Agency of Statistics (BPS), the percentage of child marriage in 2022 remained relatively stable from 2020, falling just from 21.8% in 2020⁸ to 21.5 in 2022.⁹ Specifically, the child marriage rate is high in numerous regions of Indonesia, including Central Sulawesi, West Sulawesi, Central Kalimantan, and South Kalimantan.¹⁰

In September 2015, the General Assembly of the United Nations committed to eliminating any practices that cause specific harm to women and girls,

¹ UNFPA-UNICEF, 'Investing in Knowledge for Ending Child Marriage: Publications Catalogue 2018-2019' (2019) <https://www.unfpa.org/sites/default/files/resourcepdf/GP_2018-2019_Publications_Catalogue.pdf> accessed 1 April 2024.

² Ibid.

³ Girls Not Brides, 'Child Marriage around the World' (2017) <<https://www.girlsnotbrides.org/where-does-it-happen/>> accessed 1 April 2024.

⁴ Ihsan Ihsan, 'Marriage under the Age of Legal Perspective on Sasak Tribe in Indonesia' (2020) 7(1) *Harmoni Sosial: Jurnal Pendidikan IPS* 54-65 <<http://journal.uny.ac.id/index.php/hsjpi>> accessed by 4 March 2024.

⁵ Ibid.

⁶ Ibid.

⁷ UNICEF, 'Is an End to Child Marriage Within Reach? Latest Trends and Future Prospects 2023 Update' (5 May 2023) <<https://data.unicef.org/resources/is-an-end-to-child-marriage-within-reach/>> accessed 25 February 2024.

⁸ BPS Indonesia, 'Statistik Pemuda Indonesia 2020' (21 December 2020) <<https://www.bps.go.id/id/publication/2020/12/21/4a39564b84a1c4e7a615f28b/statistik-pemuda-indonesia-2020.html>> accessed 25 February 2024.

⁹ BPS Indonesia, 'Statistik Pemuda Indonesia 2022' (27 December 2020) <<https://www.bps.go.id/id/publication/2022/12/27/6791d20b0b4cadae9de70a4d/statistik-pemuda-indonesia-2022.html>> accessed 25 February 2024.

¹⁰ Ibid.

including child marriage.¹¹ It states in the United Nations Sustainable Development Goals Target 5.3 Goal 5, “eliminate all harmful practices, such as child, early and forced marriage and female genital mutilations”.¹²

Child marriage remains a persistent issue in Indonesia despite legislative efforts aimed at limiting its prevalence. Even though there is a legal framework that prohibits child marriage, this phenomenon of child marriage continues to pose a significant challenge to the welfare and development of children, especially girls. This study seeks to explore the legal struggle and human rights aspects of child marriage in Indonesia to shed light on the underlying causes, consequences, and responses to this serious issue. This study contributes to a better understanding of the complexities surrounding child marriage by examining the interaction of laws, culture, and human rights. It will also provide insight into potential legal reform and policy intervention paths. Through rigorous analysis and empirical research, this thesis seeks to reveal the multiple issues created by child marriage in Indonesia, as well as to urge for more robust legislative safeguards and enforcement measures to preserve children’s rights and dignity.

1.2 Purpose and Research Questions

The overarching purpose of this thesis is to explore how the potential of IHRL could contribute to the effective prevention and eradication of child marriage in Indonesia. In pursuit of this goal, the study will examine the root causes and influential factors contributing to the prevalence of child marriage in Indonesia. Furthermore, it will scrutinise the Indonesian legal landscape to pinpoint any misalignments or deficiencies in adherence to international human rights principles.

To fulfil this purpose, this thesis will answer these research questions:

- (1) What does IHRL oblige states to do to prevent child marriage?
- (2) To what extent does the Indonesian legal framework align with international human rights standards in addressing child marriage within the Indonesian context?
- (3) What measures can be taken to enhance domestic protection against child marriage and ensure better compliance with IHRL?

1.3 Methodology

This thesis employs doctrinal legal research, a systematic approach focusing on understanding and interpreting legal material, such as statutes, cases, regulations, and literature, to derive legal principles and rules.¹³

¹¹ United Nations, ‘Transforming Our world: The 2030 Agenda for Sustainable Development’ (United Nations, 2015) <<https://sustainabledevelopment.un.org/post2015/transformingourworld>> accessed 1 April 2024.

¹² Ibid.

¹³ Terry Hutchinson and Nigel Duncan, ‘Defining and Describing What We Do: Doctrinal Legal Research’ (2012) *Deakin Law Review* 17(1)

The use of doctrinal legal research is aimed at comprehensively analysing and evaluating IHRL and the legal landscape surrounding child marriage in Indonesia. This method provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, and explains areas of difficulty.¹⁴ This approach seeks to uncover, scrutinise, and assess the pertinent legal frameworks within the country while also deciphering and applying relevant norms derived from IHRL. The primary objective of doctrinal legal research is to provide an unbiased and consistent depiction of the existing law in a particular field or concerning a specific institution, aiming to inform readers about its actual content and interpretation.¹⁵ This study aims to evaluate the Indonesian legal framework by examining the legal system and comparing it with IHRL, such as the Universal Declaration of Human Rights (UDHR), the United Nations Convention on the Rights of the Child (CRC), the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), The International Covenant on Economic, Social and Cultural Rights (ICESCR), and The International Covenant on Civil and Political Rights (ICCPR). This is evaluative research that assesses and evaluates domestic norms against international ones.¹⁶ The results of this research will provide recommendations for possible improvements. These recommendations were carefully developed based on a comprehensive evaluation of the study's findings, focusing on guiding Indonesia towards better compliance with IHRL regarding child marriage. The aim is to provide actionable insights outlining the steps needed to improve domestic protection against child marriage, thereby encouraging stronger compliance with IHRL.

Both primary and secondary sources were utilised to support this study and its findings. This thesis will rely on international and Indonesian law for primary materials. For International law, the author will analyse UDHR, CRC, CEDAW, ICESCR, and ICCPR. For Indonesian law, the author will examine The 1945 Constitution of the Republic of Indonesia (Indonesian Constitution), Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage (Marriage Law) and Law Number 23 of 2002 as amended by Law Number 35 of 2014 and Law Number 17 of 2016 concerning Child Protection (Child Protection Law).

Moreover, this study will rely on various secondary sources, including academic literature, reports from government agencies, non-governmental organisations (NGOs), research institutions, and investigative journalism reports. The purpose of various sources is to provide a comprehensive

<https://search.informit.org/doi/10.3316/agis_archive.20125043> accessed 7 May 202483–119.

¹⁴ P. Ishwara Bhat, *Idea and Methods of Legal Research* (Oxford University Press 2020) <<https://doi.org/10.1093/oso/9780199493098.001.0001>> accessed 7 May 2024, 11.

¹⁵ Jan M. Smits, 'What is Legal Doctrine? On the Aims and Methods of Legal-Dogmatic Research' (2015) in Rob van Gestel, Hans-W. Micklitz & Edward L. Rubin (eds.), *Rethinking Legal Scholarship: A Transatlantic Dialogue* (New York [Cambridge University Press] 2017) pp. 207-228, Maastricht European Private Law Institute Working Paper No. 2015/06, <<https://ssrn.com/abstract=2644088> <http://dx.doi.org/10.2139/ssrn.2644088>>, accessed 7 May 2024, 8.

¹⁶ Lina Kestemont, *Handbook on Legal Methodology: From Objective to Method* (Intersentia, 2018), 17.

foundation for this research. This framework uses reports from government agencies, NGOs, research institutions, and journalistic investigations to establish factual statements. At the same time, the deliberate incorporation of academic literature strengthens the research's legal analysis and argumentation.

1.4 Outline

This thesis explores various issues of child marriage in Indonesia, which is organised into five chapters. Following this introduction, the narrative shifts to understanding child marriage in the Indonesian context. Chapter Two explores the understanding of child marriage in Indonesia and the socio-cultural factors that perpetuate it. Furthermore, this chapter examines the profound impact of child marriage, particularly on the well-being of girls and women.

The narrative then expands legally in Chapter Three, analysing the IHRL concerning child marriage and providing a succinct answer to the first research question in Section 3.2. The chapter then explores Indonesia's legal and policy responses and briefly explains the relevant laws.

Chapter Four critically evaluates the effectiveness of legal efforts in combating child marriage in Indonesia. This includes thoroughly examining existing laws and regulations, assessing their alignment with IHRL, and identifying challenges in their implementation within the legal framework. Section 4.4 summarises the evaluation to answer the second research question.

Chapter Five offers comprehensive policy recommendations aimed at addressing the issues and challenges related to child marriage in Indonesia to ensure better compliance with IHRL. These recommendations include legislative reforms to align laws with international standards, socio-economic empowerment initiatives targeting families and education, and community engagement strategies to change cultural norms and raise awareness about the consequences of child marriage. Section 5.4 provides a summary of the evaluation to answer research question three.

The thesis ends with Chapter Six, which serves as a conclusion, presenting the key findings, reiterating the central argument, and emphasising the importance of addressing child marriage in Indonesia.

1.5 Significance of the Study

Child marriage remains a prevalent and profoundly ingrained issue in Indonesia, causing significant threats to the rights and well-being of young girls.¹⁷ This study is critical because it aims to shed light on the legal struggles and human rights dimensions surrounding child marriage in Indonesia. By

¹⁷ Ihsan Ihsan, 'Marriage under the Age of Legal Perspective on Sasak Tribe in Indonesia (2020) 7(1) *Harmoni Sosial: Jurnal Pendidikan IPS* 54-65 <<http://journal.uny.ac.id/index.php/hsjpi>> accessed by 4 March 2024.

exploring the causes and contributing factors of child marriage and identifying discrepancies within the Indonesian legal system, this study seeks to provide valuable insight into the complexities of the issue.

Understanding the underlying causes and sociocultural elements that contribute to child marriage is critical to developing effective interventions and policy solutions. By investigating the impact of child marriage on women's well-being, this research aims to highlight the urgent need for comprehensive prevention and eradication measures. Furthermore, this research seeks to identify challenges in implementing this legal framework by analysing existing legal and policy responses to child marriage in Indonesia.

Moreover, this thesis seeks to examine the alignment of the Indonesian legal system with IHRL in addressing child marriage. By comparing IHRL with Indonesian law, this research aims to highlight areas of alignment and divergence, thereby providing a basis for legislative reform and policy recommendations.

The findings of this master thesis are expected to contribute to broader discussions regarding child marriage and human rights in Indonesia. This study aims to provide input for advocacy efforts, policy solutions, and targeted intervention strategies to effectively address the serious problem of child marriage by uncovering legal challenges and human rights dimensions. Ultimately, this research will help advance human rights and empower women and girls in Indonesia and beyond.

1.6 Scope and Limitation

This study investigates the causes and factors that contribute to child marriage in Indonesia, with particular emphasis on aspects of legal struggles and human rights related to the phenomenon. In addition, this thesis mainly focuses on analysing the Indonesian legal framework regarding child marriage and its alignment with IHRL. This study also investigates the socio-cultural factors that cause the prevalence of child marriage and its impact on women's well-being. Additionally, this thesis explores current legal responses to child marriage and recommends legislative reforms and socio-economic empowerment initiatives.

Although this research aims to provide a comprehensive analysis of the legal challenges and human rights dimensions surrounding child marriage in Indonesia, it is important to recognise certain limitations that influence the scope and validity of the findings. The main limitations relate to data availability and accessibility. The availability and reliability of data on child marriage, especially access to primary sources, such as government documents and legal records, is limited. This can affect the depth of analysis and the ability to draw conclusions. Apart from that, child marriage is deeply ingrained in cultural norms in Indonesia. Cultural sensitivity presents challenges in accessing and interpreting data and engaging stakeholders, especially in conservative and rural communities.

In addition, the Indonesian legal system is very complex and multidimensional, with many laws and regulations at various levels of government. At the national level, the central government has drafted comprehensive laws and regulations as the basis for governance throughout the country. At the regional level, many provinces and municipalities have established their own regulations, known as regional regulations or 'Peraturan Daerah', which often address specific matters according to the local context. Additionally, customary law ('hukum adat') influences the Indonesian legal landscape in many areas, especially in rural areas where traditional practices are still prevalent. Customary law often coexists with formal legal systems, adding complexity to the system. Addressing this legal complexity poses challenges in assessing alignment with international human rights standards and identifying gaps in the legal framework.

Furthermore, the scope of this study requires concentration on specific aspects of child marriage, thereby potentially ignoring other essential components. Longitudinal studies are needed to provide more detailed information regarding the situation. Despite these limitations, this research seeks to provide valuable insights into the legal and human rights dimensions of child marriage in Indonesia to provide input for policy, advocacy, and intervention efforts to address this problem. These constraints will be acknowledged and addressed as best as possible throughout the study.

2 Understanding Child Marriage in the Indonesian Context

This chapter will investigate the problem of child marriage in Indonesia, providing a comprehensive understanding of its definition, prevalence, and the various causes that contribute to its persistence. Furthermore, it will also emphasise the implications of child marriage. By shedding light on these critical aspects, this chapter contributes to the urgent need to solve child marriage in Indonesia.

2.1 Definition and Prevalence of Child Marriage in Indonesia

Child marriage is widely acknowledged to be a detrimental sociocultural practice that can lead to human rights violations.¹⁸ According to the most recent data from BPS, Indonesia recorded a child marriage rate of 9.23 % in 2023, equivalent to 163,371 incidents.¹⁹ This means that one out of every nine girls has been married as a child. In comparison, the ratio is one in 100 for guys aged 20-24 who married as children.²⁰ In Indonesia, girls are the most vulnerable victims of child marriage, especially girls from rural areas.²¹

According to UNICEF, child marriage is any marriage in which either of the partners is under 18 years old.²² Child marriage is defined as any marriage where one or both the parties are under 18 years old²³ by Girls Not Bride, an organisation advocating against child marriage. A forced marriage is defined as a marriage in which one or both parties are married without their consent.²⁴ International organisations frequently use this phrase to highlight the fact that married minors, especially girls, are often forced into marriage against their will and are unable to provide their free and full consent.²⁵

According to the Indonesia Marriage Law, as stated in Article 7 (1), marriage is only permitted if both partners have reached the age of 19,²⁶ so marriages

¹⁸ UNICEF, 'Early Marriage: A Harmful Traditional Practice' (22 October 2005) <<https://data.unicef.org/resources/early-marriage-a-traditional-harmful-practice-a-statistical-exploration/>> accessed 29 February 2024.

¹⁹ BPS Indonesia, 'Statistik Pemuda Indonesia 2023 (29 December 2023)' <<https://www.bps.go.id/id/publication/2023/12/29/18781f394974f2cae5241318/statistik-pemuda-indonesia-2023.html>> accessed 29 February 2024.

²⁰ Ibid.

²¹ Dwi Candraningrum, 'Pernikahan anak: Status anak perempuan?' (2016) 21(1) 1.

²² UNICEF, 'Child Marriage: Child Marriage Threatens the Lives, Well-Being and Futures of Girls around the World' <<https://www.unicef.org/protection/child-marriage>> accessed 29 February 2024.

²³ Girls Not Brides, 'The World We Want' <<https://www.girlsnotbrides.org/>> accessed 3 March 2024.

²⁴ J McFarlane, A Nava, H Gilroy, & J Maddoux, 'Child Brides, Forced Marriage, and Partner Violence in America: Tip of an Iceberg Revealed' (2016) 127(4) *Obstetrics and Gynecology* 707 <<https://doi.org/10.1097/AOG.0000000000001336>> accessed 1 April 2024.

²⁵ Ibid.

²⁶ Marriage Law, Article 7 (1).

before the age of the provision are referred to as child marriage. Marriage is intended to build a happy and eternal family in which partners complete each other to develop their character and achieve spiritual and material prosperity.²⁷

Given the numerous legislative protections that Indonesian children are provided, the prevalence of child marriages should be relatively low. Surprisingly, however, the prevalence of child marriage continues to present ongoing human rights issues. Records show that Indonesia is the eighth-highest-ranked country in the world for recorded child marriages, with one in nine girls marrying before the age of 18; 16% of girls marry before the age of 18, and 2 % marry before the age of 15.²⁸ The prevalence of early marriage among females and males is significantly greater (37% female, 12% male).²⁹ Moreover, child marriages primarily occur in rural areas, and most victims of child marriage are girls who have been perceived as a burden to their families.³⁰

Child marriage is considered a harmful tradition that violates human rights.³¹ Child marriage is a form of violence against women and girls, as it deprives them of their rights to education, healthcare, and freedom from violence.³² Even though IHRL and many state laws forbid child marriage, it continues to rob millions of girls' childhoods around the world. It pulls children out of school and into a life with poor prospects, including an increased risk of violence, abuse, illness, or death. Child marriage continues to be a deeply entrenched issue, affecting the lives of countless young girls.³³

In 2013, the Human Rights Council adopted a resolution aimed at strengthening efforts to prevent child marriage.³⁴ In 2014, the UNGA passed another resolution on the same topic.³⁵ More recently, the United Nations named the elimination of child marriage as a target in the Sustainable

²⁷ K. Wantjik Saleh, *Marriage Law in Indonesia* (Ghalia Indonesia, 1960), 14.

²⁸ UNICEF, 'Saying No to Child Marriage in Indonesia' (2019) <<https://www.unicef.org/indonesia/stories/saying-no-child-marriage-indonesia>> accessed by 25 February 2024.

²⁹ Ibid.

³⁰ Nevena Vuckovic Sahovic & Precious Eriamiatoe, 'Effectiveness of the Convention on the Rights of the Child in Realization of the Right to a Remedy for Child Victims of Violence in Africa' (2020) 110(Pt 1) *Child Abuse & Neglect*, Elsevier Ltd, <<https://doi.org/10.1016/j.chiabu.2019.104307>> accessed 1 April 2024.

³¹ United Nations, 'Transforming Our world: The 2030 Agenda for Sustainable Development' (United Nations, 2015) <<https://sustainabledevelopment.un.org/post2015/transformingourworld>> accessed 1 April 2024.

³² Girls Not Brides, 'A Girl's Rights to Say No to Marriage: Working to End Child Marriage and Keep Girls in School' (1 May 2013) <<https://www.girlsnotbrides.org/learning-resources/resource-centre/a-girls-right-to-say-no-to-marriage/>> accessed 1 April 2024.

³³ Ibid.

³⁴ United Nations Human Rights Council, 'Resolution Adopted by the Human Rights Council, Strengthening Efforts to Prevent and Eliminate Child, Early and Forced Marriage: Challenges, Achievements, Best Practices and Implementation Gaps' (2013) A/HRC/RES/24/23.

³⁵ UNGA, 'Resolution 69/156 Child, Early and Forced Marriage, (18 December 2014) UN Doc (A/69/484)] 69/156.

Development Goals³⁶ That emphasise the negative consequences of child marriage, such as domestic violence, reduced educational opportunities, and health implications.³⁷

2.2 Socio-Cultural Factors Contributing to Child Marriage

Child marriage is a human rights violation that deprives a girl of her childhood.³⁸ Women, in many societies, have historically been disproportionately affected by early marriage, which can have severe consequences for their health, education, and well-being.³⁹ Child marriage in Indonesia is deeply ingrained in specific cultural and traditional practices, particularly in rural and remote areas.⁴⁰ Traditional and cultural practices, economic difficulties, and inadequate education are the factors that have historically contributed to early marriage.⁴¹

2.2.1 Traditional and Cultural Practices

The first root cause that causes child marriage is traditional and cultural practices in their communities. Numerous investigations have examined the elements that contribute to child marriage in Indonesia, encompassing socio-economic issues, including traditional and cultural.⁴² Some regions or communities may adhere to customary or religious practices that allow child marriage, which conflicts with national law.

People in most areas of Indonesia embrace the patriarchal system in which women are treated unequally to men.⁴³ The patriarchal system creates a

³⁶ Sustainable Development Knowledge Platform, 'Sustainable Development Goals. Sustainable Development Knowledge Platform' <https://sustainabledevelopment.un.org/?menu=1300> accessed 1 April 2024.

³⁷ Ibid.

³⁸ Jennifer Parsons, et al, 'Economic Impacts of Child Marriage: A Review of the Literature' (2015) *The Review of Faith & International Affairs* 13 (3), 12–22.

³⁹ Yvette Efevbera & Jacqueline Bhabha, 'Defining and Deconstructing Girl Child Marriage and Applications to Global Public Health' (2020) *BMC Public Health*, 20, 1547 <<https://doi.org/10.1186/s12889-020-09545-0>> accessed 20 March 2024.

⁴⁰ Muliani Ratnaningsih, et al, 'Child Marriage Acceptability Index (CMAI) as an Essential Indicator: An Investigation in South and Central Sulawesi, Indonesia' (2022) *Global Health Research and Policy* 7, 32 <<https://doi.org/10.1186/s41256-022-00252-4>> accessed 29 February 2024.

⁴¹ Bagong Suyanto, et al, 'The Causes and Impacts of Early Marriage: the Ordeal of Girls in East Java, Indonesia' (2023) *Sociologia Problemas e Praticas*, no. 101, 71-94. <<https://doi.org/10.7458/SPP202310126851>> accessed 7 April 2024.

⁴² BPS, 'National Development Planning Agency (Bappenas), UNICEF, PUSKAPA. Pencegahan Perkawinan Anak: Percepatan yang Tidak Bisa Ditunda' (2020) <<https://www.unicef.org/indonesia/media/2851/file/Child-Marriage-Report-2020.pdf>> accessed 3 March 2024

⁴³ Spence, N., & Lan, N. T. T., 'Family sustainability and Child Protection in Vietnam' (2021) 122 *Children and Youth Services Review* 105884 <<https://doi.org/10.1016/j.childyouth.2020.105884>> accessed 1 April 2024.

negative paradigm for women.⁴⁴ In a family, the son's education would be given priority due to the patriarchal norms. Similarly, in terms of marriage, women and girls are denied the freedom to make their own choices and are often unable to say no to early marriage.⁴⁵ A woman may be regarded as too old if unmarried for an extended period, but a male does not face this label. This mentality pushes Indonesian women to marry too young and reinforces the idea that girls should be married off early to take on domestic roles and serve their husbands. In this patriarchal context, girls are often seen as having limited value beyond their roles as wives and mothers.

Gender inequality is a significant underlying cause of child marriage in Indonesia, as it perpetuates social norms and practices that result in the early marriage of girls.⁴⁶ It refers to traditional gender roles, saying that a girl's marriage will be decided by her family and community elders.⁴⁷ Girls' autonomy and ability to make their own decisions at home and in the community is limited due to the power imbalance between men and women.⁴⁸

Religion also plays a vital role in promoting child marriage in Indonesia. As citizens of one of the world's largest Muslim countries, the majority of Indonesians are conservative. People use the Muslim concept of mental and physical maturity to measure marriageability. For boys, it is when they can work, while for girls' puberty indicates when they are ready for marriage.⁴⁹

Moreover, religious beliefs have always been used to justify child marriage. Marriage is viewed as a strategy for avoiding sexual promiscuity, which is forbidden by the majority religion. Parents believe that marrying off their daughters at a young age will protect them from rape⁵⁰, premarital sexual activity, and unwanted pregnancies.⁵¹ Marriage is the solution in case of teenage pregnancy, as abortion is restricted by law and access to contraception is very limited for unmarried couples.⁵² Aside from that, there are situations in which the local community uses the fact that many pregnancies happen outside of marriage as justification for legalising early marriage.⁵³

⁴⁴ Joar Svanemyr, et al, 'Research Priorities on Ending Child Marriage and Supporting Married Girls' (2015) 12 *Reproductive Health* 80 <<https://doi.org/10.1186/s12978-015-0060-5>> accessed 7 April 2024.

⁴⁵ Ayu Febrianti Nurhaliza and Firzhal Arzhi Jiwantara, 'Requests for Child Marriage Dispensation in West Nusa Tenggara Province' (2024) SHS Web Conf. 182 04002 <<https://doi.org/10.1051/shsconf/202418204002>> accessed 29 February 2024.

⁴⁶ Barbara Anandya, 'Gender, Islam and the Bugis Diaspora in Nineteenth and Twentieth-Century Riau' (2003) 21 *Sari J Alam dan Tamadun Melayu* 77–108.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Mies Grijns and Hoko Horii, 'Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns' (2018) 5 *Asian Journal of Law and Society* 459 <<https://doi.org/10.3201/eid1211.060510>> accessed by 1 April 2024.

⁵⁰ United Nations Economic and Social Council, 'Report of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators (19 February 2016) E/CN.3/2016/2/Rev.1 < <https://digitallibrary.un.org/record/821651?ln=en&v=pdf#files>> accessed 7 March 2024).

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

2.2.2 Low Education

A low level of education is one of the factors raising the risk of early marriage.⁵⁴ Education is an activity that uses learning principles to improve someone's knowledge and help them reach their desired living circumstances or try to achieve them.⁵⁵ In the concept of early marriage, by educating young people about the consequences of child marriage, they are supposed to understand how early marriage affects their desire to marry early. Adolescents' knowledge level influences their attitudes and actions while making a decision.⁵⁶ Moreover, formal education, particularly for females, is widely acknowledged as one of the most effective measures for delaying the age at which they marry.⁵⁷ When a girl attains a greater degree of education, she is more likely to marry later.⁵⁸ Providing insight and understanding about marriage may help determine the ideal age for marriage, particularly among teenagers.

Furthermore, girls in rural areas need more opportunities to receive proper education and information.⁵⁹ Girls who lack education could be more vulnerable to economic insecurity and lack the requisite abilities to negotiate marriage-related decisions.⁶⁰ They have no idea that marrying at such a young age would significantly impact their future lives. They can not make decisions regarding education as they needed to get permission from their husband to pursue their studies.⁶¹ Early marriage restricts girls' access to education, hindering their capacity to work, live a whole life, and contribute to their family and community.⁶²

2.2.3 Economic Factors

Poverty has a significant influence on encouraging child marriage. Child marriage is more likely to occur among poor girls who have less education

⁵⁴ Paul, Pintu, "Effects of Education and Poverty on the Prevalence of Girl Child Marriage in India: A district-level analysis" (2019) 100 *Children and Youth Services Review*, 19 <<https://doi.org/10.1016/j.chilyouth.2019.02.033>> accessed 1 April 2024.

⁵⁵Ibid 16.

⁵⁶ Donsu, *Psikologi Keperawatan* (Pustaka Baru, 2017).

⁵⁷ Joar Svanemyr, "Preventing Child Marriages: First International Day of the Girl Child 'My Life, My Right, End Child Marriage'" (2012) 9 *Reprod Health* 31 <<https://doi.org/10.1186/1742-4755-9-31>> accessed 1 April 2024.

⁵⁸ Ibid.

⁵⁹ Luke Gibson, "Towards a More Equal Indonesia: How the Government can Take Action to Close the Gap Between the Richest and the Rest" (2017) Oxfam <<http://hdl.handle.net/10546/620192>> accessed 1 April 2024.

⁶⁰ Murphy-Graham, Erin, and Graciela Leal, "Child Marriage, Agency, and Schooling in Rural Honduras" (2015) 59(1) *Comparative Education Review*, 24-49.

⁶¹ Kazutaka Sekine and Marian Ellen Hodgkin, "Effect of Child Marriage on Girls' School Dropout in Nepal: Analysis of Data from the Multiple Indicator Cluster Survey 2014" (2017) 12(7) *PLoS One* e0180176 <<https://doi.org/10.1371/journal.pone.0180176>> accessed 29 February.

⁶² Sherly Lianto Lau, "Phenomenon of Early Marriage on Girls in The Cintapuri Village in Banjarmasin City (Phenomenological Study)" (2023) 8(12) *KnE Social Sciences*, 456-470 <<https://doi.org/10.18502/kss.v8i12.13694>> accessed 1 April 2024.

and lack awareness about the dangers of early marriage.⁶³ Poverty forced low-income families in Indonesia to face the harsh reality that they will not be able to meet many essential needs of their children.⁶⁴ Child marriage is more common in low-income communities where parents are faced with two economic incentives: to ensure their daughter's financial security or to decrease the economic burden daughters impose on the family.⁶⁵ Children are regarded as objects to marry so that parents are free from economic burdens.⁶⁶

2.3 Implications of Child Marriage

According to UNICEF, child marriage shortens childhood.⁶⁷ Children are expected to spend time at school and play with friends during childhood. Once married, children are accountable for domestic responsibilities, which they know little about. Since the CRC gives the view that childhood is a development process⁶⁸, child marriage leads to the denial of childhood and adolescence, the restriction of personal freedom, and the lack of opportunity for full development, self-confidence⁶⁹, and childhood abuses.⁷⁰ Child marriage violates the right to health, education, equality, liberty, and the right to make free and informed consent.⁷¹

2.3.1 Physical Reproductive Health Risks

Child marriage has negative consequences, particularly for girls or women. Girls or women who are victims of child marriage are at higher risk than boys.⁷² This is because females are forced to have sexual interactions at a young age, which leads to early pregnancies and deliveries.

⁶³ Simin Montazeri, et al, 'Determinants of Early Marriage from Married Girls' Perspectives in Iranian Setting: A Qualitative Study" (2016) *J Environ Public Health* 2016:8615929 at <<https://doi.org/10.1155/2016/8615929>> accessed 29 February 2024.

⁶⁴ John Tobin & Judy Cashmore, 'Thirty Years of the CRC: Child Protection Progress, Challenges and Opportunities' (2020) 110 *Child Abuse & Neglect* 104436 <<https://doi.org/10.1016/j.chiabu.2020.104436>> accessed 1 April 2024).

⁶⁵ Nawal M Nour, 'Child Marriage: A Silent Health and Human Rights Issue' (2009) 2(1) *Rev Obstet Gynecol*, 51–56.

⁶⁶ Rika Saraswati, *Hukum Perlindungan Anak di Indonesia* (P.T. Citra Aditya Bakti, 2015) 55.

⁶⁷ United Nations Children's Fund Innocenti Research Centre, 'Early Marriage: Child Spouses' (2001), 1.

⁶⁸ Chaudhuri, E. R, 'National Child Protection Systems in the East Asia and Pacific Region: A Review and Analysis of Mappings and Assessments' (2014) ECPAT International, 2.

⁶⁹ United Nations Children's Fund Innocenti Research Centre, 'Early Marriage: Child Spouses' (2001), 6.

⁷⁰ *Ibid*, 9.

⁷¹ Jaya Sagade, *Child Marriage in India: Socio-legal and Human Rights Dimensions* (Oxford University Press, 2005).

⁷² Guday Emirie, Nicola Jones, Meti Kebede, 'The School Was Closed, so When They Brought Me a Husband, I Couldn't Say No': Exploring the gendered experiences of child marriage amongst adolescent girls and boys in Ethiopia (2021) 33 *European Journal of Development Research* 1252–1273 <<https://doi.org/10.1057/s41287-021-00418-9>> accessed 1 April 2024.

UNICEF has released a report, “Early Marriage: A Harmful Traditional Practice”.⁷³ The report presents data regarding the prevalence of child marriage and its association with polygamy, domestic violence, and reproductive health.⁷⁴ A study conducted by Cameron et al. finds that child marriage had a detrimental influence, particularly on women, affecting their subjective well-being.⁷⁵ Another study in Indonesia discovered that child marriage had negative implications for girls, including decreased schooling possibilities, reproductive health hazards and an increased risk of mother and child mortality, as well as lack of access to adequate healthcare services.⁷⁶ This issue is particularly concerning since it can have a detrimental influence on women’s health and well-being, including a high risk of maternal and newborn mortality, as well as a poor impact on the women’s social life.⁷⁷

Child marriage has a substantial impact on women’s experiences during pregnancy and childbirth, as well as the health of their children.⁷⁸ Early pregnancies have been linked to higher maternal death rates.⁷⁹ Mothers under 18 years have a 35% to 55% higher risk of giving birth to premature or low birth weight babies than mothers over 19 years and the infant mortality rate is 60% higher if the mother is under 18 years old.⁸⁰ Child marriage results in fewer prenatal tests, a lower likelihood of the women having a medically monitored birth, and an increased risk of her kid dying before the age of one.⁸¹ Those children who survive are more likely to be stunted, which has been linked to lower cognitive ability and other health issues.⁸² The data showed that even after surviving the first year, children under 5 years had a 28% higher mortality rate in the group of young mothers.⁸³ Young mothers’ poor nutrition causes this physical and emotional immaturity, a lack of access to social and reproductive care, and an increased risk of infectious illness.⁸⁴

⁷³ UNICEF, ‘Early Marriage: A harmful Traditional Practice’ (2015) <<https://data.unicef.org/resources/early-marriage-a-traditional-harmful-practice-a-statistical-exploration/>> accessed 7 April 2024.

⁷⁴ Ibid.

⁷⁵ Lisa Cameron, Diana Contreras Suarez and Susan Wiecekiewicz, ‘Child Marriage: Using the Indonesian Family Life Survey to Examine the Lives of Women and Men Who Married at an Early Age’ (2023) 21 Review of Economics of the Household 725–756, <<https://doi.org/10.1007/s11150-022-09548-2>> accessed 25 February 2024.

⁷⁶ BPS-UNICEF, ‘Pencegahan Perkawinan Anak Percepatan yang Tidak Bisa Ditunda’ (2020) Badan Pusat Statistik 7, 12 <<https://www.unicef.org/indonesia/media/2851/file/Child-Marriage-Report-2020.pdf>> accessed 25 February 2024.

⁷⁷ Ibid.

⁷⁸ Lisa Cameron, Diana Contreras Suarez and Susan Wiecekiewicz, ‘Child Marriage: Using the Indonesian Family Life Survey to Examine the Lives of Women and Men Who Married at an Early Age’ (2023) 21 Review of Economics of the Household 725–756, <<https://doi.org/10.1007/s11150-022-09548-2>> accessed 25 February 2024.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

A study also showed that early marriage in girls was associated with the risk of getting sexually transmitted diseases.⁸⁵ Research has revealed that marriage before the age of 20 is a risk factor for HIV/AIDS infection in girls.⁸⁶ Because the girls are trying to prove their fertility, they often have unprotected intercourse with their husbands who have had sexual partners or been polygamous.

In addition, girls who marry early, face domestic violence, including various forms of physical, emotional, and sexual violence. According to research conducted across 34 nations, women who married as adults were more likely than those who married as children to report experiencing physical or sexual abuse at the hands of their parents.⁸⁷ Children who marry before the age of 18 are a risk factor for intimate partner violence and the risk increases for those who marry before the age of 15.⁸⁸ In its worst form, it leads to the exploitation of child brides as domestic slaves or victims of sex trafficking, either during or after their marriage, when they are divorced or abandoned.⁸⁹

2.3.2 Psychological and Emotional Impact

Early marriage, particularly before the age of 18, has a significant negative impact on women's psychology.⁹⁰ Child marriage can have severe psychological and emotional implications for all of those involved. Young brides, most of them girls, may feel isolated, depressed, and lack agency in their lives.⁹¹ Child marriage is frequently forced or arranged by families or communities, leaving young girls traumatised by the experience. They may feel stressed because of the abrupt change into married life, which they are not emotionally prepared for.

Child marriage also deprives young girls of the ability to enjoy their formative years, seek an education, and participate in activities appropriate for their age. This loss might cause bitterness, regret, and yearning for their lost possibilities. Early marriage can lead to emotional and psychological distress. Early marriage puts a lot of pressure on women, causing them a lot of

⁸⁵ Morvarid Irani & Robab Latifnejad Roudsari, 'Reproductive and Sexual Health Consequences of Child Marriage: A Review of literature' (2019) 7(1) *Journal of Midwifery and Reproductive Health* 1491-1497 <<https://doi.org/10.22038/jmrh.2018.31627.1342>> accessed by 1 April 2024.

⁸⁶ Joint United Nations Programme on HIV and AIDS. World AIDS Campaign 2004: Women, Girls, HIV and AIDS. Strategic Overview and Background Note. <<http://www.etharc.org/aidscampaign/publications/wac2004.pdf>> accessed by 1 April 2024.

⁸⁷ Kasjim Salenda, 'Abuse of Islamic Law and Child Marriage in South-Sulawesi Indonesia' (2016) 54(1) *Al-Jāmi'ah J Islam Study* 95-122. <<https://doi.org/10.14421/ajis.2016.541.95-122>> accessed 1 April 2024.

⁸⁸ Kathryn M Yount, et al, 'Child Marriage and Intimate Partner Violence in Rural Bangladesh: A Longitudinal Multilevel Analysis' (2016) 53(6) *Demography* 1821-1852.

⁸⁹ Ibid.

⁹⁰ John N A, et al, 'Child Marriage and Psychological Well-Being in Niger and Ethiopia' (2019) 19 *BMC Public Health* 1029, <<https://doi.org/10.1186/s12889-019-7314-z>> accessed 9 April 2024.

⁹¹ Ibid.

psychological harm and it leads to depression, and in the end, it could even lead to suicide.⁹²

Furthermore, according to statistics, 50% of child marriages end in divorce within 1-2 years⁹³ due to incompatibility and difficulty managing a home. Psychologically, most young brides are not as mature enough as their husbands. This disparity causes problems in their families and results in divorce.

2.3.3 Education Interruption

Child marriage in Indonesia often interrupts or ends the education of the child, particularly girls. Many young brides are compelled to drop out of school to meet familial and marital responsibilities, which limits their possibilities for personal growth and economic empowerment. Child marriage is associated with lower levels of education, less access to social protection, lower probability of birth with the assistance of a trained midwife and breastfeeding, higher rates of divorce, and more significant opportunities to work in the informal sector.⁹⁴

Child marriage hinders girls' access to education and limits their opportunities for the future. When girls are married at a young age, they are more likely to drop out of school, which limits their ability to contribute to the workforce and the country's overall development.⁹⁵

2.3.4 Intergenerational Impact

Aside from the problem that child marriage causes for individuals, it also has detrimental social implications. The impacts of child marriage are not only experienced by the children who are married but also by the children that will be born and it has the potential to create intergenerational poverty.⁹⁶ A study in sub-Saharan Africa found that children born to women who married before 18 were more likely to be stunted and unable to achieve growth.⁹⁷

Furthermore, child brides often need more autonomy and decision-making capacity in their marital household. They are economically dependent on their spouse or families, limiting their capacity to pursue economic opportunities outside the home. This dependency reinforces their reliance on others for

⁹² Javad Yoosefi Lebni, et al, 'Exploring the Consequences of Early Marriage: A Conventional Content Analysis" (2023) 60 Inquiry 00469580231159963, <https://doi.org/10.1177/00469580231159963> accessed 25 February 2024.

⁹³ Koalisi Perempuan Indonesia, 'Lembar Informasi: Stop Perkawinan Anak' (2016) Koalisi Perempuan Indonesia.

⁹⁴ Ibid.

⁹⁵ Jaya Sagade, *Child Marriage in India: Socio-legal and Human Rights Dimensions* (Oxford University Press, 2005).

⁹⁶ UNICEF Indonesia, 'Child Marriage in Indonesia: Progress on Pause' (2016) UNICEF Indonesia.

⁹⁷ Yvette Efevbera, et al, 'Girl Child Marriage as A Risk Factor for Early Childhood Development and Stunting' (2017) 185:91-101, *Social Science & Medicine*, <<https://doi.org/10.1016/j.socscimed.2017.05.027>> accessed 1 April 2024.

financial support and makes them vulnerable to economic distress. Moreover, the cycle of poverty is passed down through generations, as children born to young mothers are more likely to be poor themselves. These children are frequently raised in environments with limited resources and opportunities, making it difficult for them to break free from the cycle of poverty that has been entrenched within their families.⁹⁸

To conclude this chapter, child marriage in Indonesia remains a persistent challenge despite legislative protection. Rooted in socio-cultural factors, such as tradition and religious practice, economic difficulties, and low education, child marriage disproportionately impacts girls, increasing gender inequality and denying them opportunities for personal development. Traditional gender roles and patriarchal norms limit girls' autonomy and reinforce the idea that marriage at a young age is acceptable, which is often driven by economic or religious reasons. Despite international attempts to discourage child marriage, its prevalence remains a major human rights concern in Indonesia, particularly in rural regions where it remains deeply ingrained.

The consequences of child marriage go beyond individual suffering, including reproductive health, psychological well-being, and educational outcomes. Early marriage often leads to adverse reproductive health risks for women, including higher rates of maternal and infant mortality, as well as increased vulnerability to sexually transmitted diseases. Psychologically, young brides may experience emotional distress and face domestic violence, while the interruption of education perpetuates cycles of poverty and limits future opportunities. Moreover, child marriage has long-term consequences, contributing to the perpetuation of poverty and limiting the potential for social and economic development.

⁹⁸ Simin Montazeri, et al, 'Determinants of Early Marriage from Married Girls' Perspectives in Iranian Setting: A Qualitative Study" (2016) *J Environ Public Health* 2016:8615929 at <<https://doi.org/10.1155/2016/8615929>> accessed 29 February 2024.

3 How does the Law Regulate Child Marriage?

This chapter will examine the legal frameworks concerning child marriage, both on the international stage and within the context of Indonesia. It will highlight the worldwide commitment to protecting children's rights and eradicating practices such as child marriage by providing an overview of international human rights treaties such as UDHR, CRC, CEDAW, ICESCR, and ICCPR. Furthermore, the chapter will look at Indonesia's legal responses to child marriage, including the 1945 Constitution, the Marriage Law, and the Child Protection Law.

3.1 Overview of Relevant International Human Rights Instruments

In terms of international human rights, child marriage is a deeply concerning issue that not only calls into question the essence of dignity and equality but also sheds light on the systemic inequalities and violations of human rights that continue to exist in societies around the world. The narrative of IHRL addressing child marriage is one of recognition, action, and ongoing advocacy, reflecting a commitment to protect the rights of vulnerable people, particularly children.

3.1.1 The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) is the foundation of international human rights within the principles lies the core of freedom, dignity, and equality. The UDHR supported the dignity and worth of the individual and equal rights for men and women.⁹⁹ UDHR offers implicit considerations regarding child marriage, intertwined in various articles that emphasise basic principles such as equality, non-discrimination, and the fundamental right to enter into marriage independently and with full consent. In delving into the text, it becomes clear that the UDHR appears as a light of hope to prevent child marriage, arguing for the protection and preservation of the rights and dignity of individuals, particularly young girls who are disproportionately affected.

Article 16 (1) states, "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family".¹⁰⁰ While this article does not specify an age limit, it implies that marriage should occur between people who have reached full age, generally defined as 18 or older.¹⁰¹ Moreover, child marriage might significantly limit

⁹⁹ UDHR G.A. Res. 217, U.N. Doc. A/810, at 71 (1948). Article 7 reads in part: "All are Equal Before the Law and are Entitled Without Any Discrimination to Equal Protection of the Law".

¹⁰⁰ UDHR, (1948) Article 16 (1).

¹⁰¹ UNICEF, 'Child marriage 2019' (2019) <<https://www.unicef.org/protection/child-marriage>> accessed 20 March 2024.

the ability of children to fully enjoy their right to family life as guaranteed by Article 16 (1). Children who are forced into marriage at a young age lose significant autonomy in terms of family structure and dynamics.¹⁰² They may face pressure to take on adult roles before they are ready, depriving them of their childhood and the opportunity for a caring family environment.¹⁰³

Article 16 (2) states, “Marriage shall be entered into only with the free and full consent of the intending spouses”.¹⁰⁴ This provision aims to protect individuals from forced marriages, ensuring that marriage is based on mutual agreement and respect between spouses. Child marriage, in which adolescents are frequently pushed to marry without their actual permission, clearly contradicts the principles described in this article. Article 16 (2) is essential for protecting the rights of vulnerable groups, including women and children.

Similarly, children who are forced into marriage are denied the rights to education, health, and childhood free from exploitation.¹⁰⁵ This provision helps empower these groups and protect their rights and dignity by emphasising the need for consent. Many countries have passed laws explicitly prohibiting forced marriage and set the minimum age for marriage, generally with the permission of both parties.¹⁰⁶

3.1.2 The Convention on the Rights of the Child

Building upon the UDHR, the Convention on the Rights of the Child (CRC) evolved as a pivotal instrument addressing children’s rights. Adopted by the United Nations General Assembly in 1989, the CRC establishes a comprehensive framework for protecting and promoting children’s rights. The CRC seeks to protect the full spectrum of human rights, which are civil, political, economic, social, and cultural.¹⁰⁷ However, before adopting the CRC, children were generally invisible within the United Nations or were passive objects of concern for international law. As a result, children were commonly considered as victims who were incapable of taking control of their own lives. The adoption of the CRC recognises the need for a child-centred approach to protecting human rights.¹⁰⁸

The CRC contains a provision calling for abolishing traditional practices detrimental to children’s health.¹⁰⁹ Additionally, state parties are forbidden under the CRC from recognising or approving marriages between individuals

¹⁰² Ayako Kohno, et al, ‘Investigation of the Key Factors that Influence the Girls to Enter into Child Marriage: A Meta-Synthesis of Qualitative Evidence’ (2020) 15(7) PloS One e0235959 < <https://doi.org/10.1371/journal.pone.0235959> > accessed 20 March 2024, 8-10.

¹⁰³ Ibid.

¹⁰⁴ UDHR, (1948) Article 16 (2).

¹⁰⁵ Sanya Darakhshan Kishwar, ‘The Persisting Menace of Child Marriage: An Account of Non-Legal Factors Contributing to Ineffectiveness of Legal Frameworks’ (2022) 19 Age of Human Rights Journal 93-119.

¹⁰⁶ Belinda (n 120) 58-68.

¹⁰⁷ Geraldine Van Bueren ‘*Children Rights*’ in Daniel Moeckli, Sangeeta and Sandesh Sivakumaran (eds), *International Human Rights Law* (3rd edn, Oxford University Press 2018), 326.

¹⁰⁸ Ibid, 327.

¹⁰⁹ CRC, (1989) Article 24 (3).

who have not reached adulthood.¹¹⁰ The CRC emphasises that state parties must take all appropriate measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s), or any other person who has the care of the child.¹¹¹ Child marriage is linked to other children's rights, such as the right to freely express their opinions, the right to be free from all forms of abuse, and the right to be protected from harmful traditional practices. The Committee frequently addresses it on the Rights of the Child.¹¹² The Committee has consistently discussed child marriage in its Concluding Observation to governments that have ratified the CRC.¹¹³

The CRC is the first international treaty to acknowledge children as rights holders and defines a child as anyone under 18 years old. In the context of the CRC, "A child means every human being below the age of eighteen years unless, under the law applicable to the child, the majority is attained earlier".¹¹⁴ This definition emphasises the fact that individuals under the age of 18 require special protection and help to ensure their rights are protected. The practice of child marriage, which often involves people under the age of 18, is recognised as inconsistent with the CRC's definition of childhood. The CRC considers that the minimum age for marriage must be 18 years for both men and women.

Article 3 (1) CRC states that children's best interests shall be a primary consideration.¹¹⁵ However, the child's best interest is a high priority and should not be lost among the many considerations to consider when making a decision, including marriage. Article 19 of the CRC highlights children's right to be protected from all forms of physical or mental aggression, harm, or abuse, identifying child marriage as a violation of this fundamental right.¹¹⁶ Furthermore, Article 24 (3) of the CRC emphasises the right of children to attain the highest standard of health, encompassing both physical and mental well-being.¹¹⁷

3.1.3 The Convention on the Elimination of All Forms of Discrimination against Women

In parallel, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) developed as a guiding light in the fight for gender equality.¹¹⁸ CEDAW, adopted in 1979, is a ground-breaking

¹¹⁰ CRC, (1989) Article 16 (2).

¹¹¹ Malcolm Nathan Shaw, *International Law* (9th ed, Cambridge university press 2021) 249.

¹¹² United Nation, 'Committee on the Rights of the Child' <<https://www.ohchr.org/en/treaty-bodies/crc/introduction-committee>> accessed 31 Mar 2024.

¹¹³ *Ibid.*

¹¹⁴ CRC, (1989) Article 1.

¹¹⁵ CRC, (1989) Article 3 (1).

¹¹⁶ *Ibid.*, Article 19.

¹¹⁷ *Ibid.*, Article 24(3).

¹¹⁸ Shaw, (2021) at 322-325

international convention that addresses gender-based discrimination in all aspects of life, including marriage and family relations.¹¹⁹ CEDAW explicitly calls for the elimination of discrimination against women relating to marriage and family matters, condemning child marriage as a form of gender-based discrimination.

CEDAW acts as an essential instrument for advocating against child marriage and supporting girl's rights. Child marriage is frequently associated with gender inequality and discrimination against girls, as it disproportionately impacts young girls and reinforces detrimental gender norms. In 1994, when the UN Committee on CEDAW, in the general recommendation, held that the minimum age of marriage should be 18 years for both men and women because of the impact of marriage on education, health, and economics.¹²⁰

Article 16 of CEDAW focuses explicitly on eliminating discrimination against women in marriage and family life.¹²¹ Article 16 (2) of the CEDAW mandates all state parties take the necessary action to set a minimum age of marriage and make marriage registration compulsory, but without establishing an age restriction.¹²² CEDAW's emphasis on securing free and full consent in marriage, equality within marriage, and the right to choose a spouse without coercion is particularly relevant to addressing child marriage.¹²³ By adhering to this principle, CEDAW condemns child marriage as a violation of women's rights and a form of gender-based discrimination.

3.1.4 The International Covenant on Economic, Social, and Cultural Rights

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) is a significant international treaty that outlines individuals' economic, social, and cultural rights. According to Article 10 (1), the ICESCR emphasises that marriage must be entered into with the free consent of the intended spouse.¹²⁴ Moreover, General Comment No. 16 of the CESCR sets out the state party's obligation to ensure equal rights between men and women to choose if, whom, and when to marry. Some of these concern the following: differences in marriageable age between men and women violate Article 10¹²⁵; the practice of early marriage harms the right to health, education, and work¹²⁶. The ICESCR Committee has also suggested that the legal minimum age of marriage be raised to 18.¹²⁷

¹¹⁹ Ibid.

¹²⁰ CEDAW, 'General Recommendation No. 21: Equality in marriage and family relations' (1994) United Nations 36.

¹²¹ CEDAW, (1979) Article 16.

¹²² CEDAW, (1979) Article 16 (2).

¹²³ Hendrik Rönsch, 'Effectiveness of Laws and Policies Governing Permissive Parenting in Pursuit of the Reduction of Severe Child Abuse in Germany' (2020) 119 *Children and Youth Services Review* 105510 <<https://doi.org/10.1016/j.childyouth.2020.105510>> accessed 19 April 2024.

¹²⁴ ICESCR, (1966) Article 10 (1).

¹²⁵ ICESCR, Concluding Comments, Suriname, E/1996/22 (1995) par.159

¹²⁶ ICESCR, Concluding Comments, Sri Lanka, E/1999/22 (1999) par.73.

¹²⁷ ICESCR, Concluding Comments, France, E/2002.22 (2001) par. 876

The ICESCR affirms everyone can enjoy the highest attainable physical and mental health standards.¹²⁸ Child marriage has a variety of health effects, including early pregnancies, limited access to healthcare, and an increased risk of sexually transmitted illnesses.¹²⁹ As a result, measures to prevent and eradicate child marriage might be presented in terms of protecting the right to health guaranteed by the ICESCR. In regards to Article 12, the Committee suggests the need to adopt an effort to combat harmful practices affecting the health of children, including early marriage.¹³⁰

Furthermore, According to Article 13, the ICESCR recognises everyone's right to education.¹³¹ Child marriage frequently disrupts the education of young girls, denying them opportunities for personal development and economic empowerment. States parties to the ICESCR can fulfil their commitments to promote and preserve the right to education by advocating for measures that prevent child marriage and support girls' education.

While the ICESCR does not directly mention child marriage, its principles provide a significant framework for addressing this practice and promoting the rights and well-being of children. States signatories must take steps to prevent and address human rights violations within their jurisdictions, including child marriage. Through comprehensive approaches that address the root causes of child marriage, state parties can seek to fulfil their commitments under the ICESCR and advance children's rights worldwide.

3.1.5 The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) is a major international human rights instrument focusing on civil and political rights. While the ICCPR does not explicitly address child marriage, its provisions can be interpreted and applied to address this harmful practice within the larger context of human rights. The ICCPR enshrines essential principles such as the right to life, the prohibition of torture and cruel, inhuman, or degrading treatment, and the right to liberty and security of person. These rights are essential in the context of child marriage since young brides frequently experience severe physical and psychological trauma, such as domestic violence, sexual abuse, and reproductive health complications.

Article 23 of the ICCPR acknowledges the right of men and women of marriageable age to marry and start a family.¹³² While this article does not prescribe a minimum marriage age, it emphasises the significance of ensuring that the intended spouses give their full and free consent. Child marriage, by definition, contradicts the principle of free and full consent, as children lack the maturity and autonomy to make informed decisions about marriage.

¹²⁸ ICESCR, (1966) Article 12.

¹²⁹ Ibid.

¹³⁰ Rizky Irfano Aditya & L.B. Waddington, 'The Legal Protection Against Child Marriage in Indonesia' (2021) 9(2) *Bestuur* 126-134.

¹³¹ ICESCR, (1966) Article 13.

¹³² ICCPR, (1976) Article 23.

Furthermore, the ICCPR protects the right to equality before the law and freedom from discrimination. States parties shall take appropriate action to ensure equality of rights and responsibility of spouses as to marriage, during marriage and at its dissolution.¹³³

Child marriage disproportionately impacts girls while perpetuating gender inequality and discrimination against women. In addition, the Human Rights Committee, the body responsible for monitoring the implementation of ICCPR, has addressed child marriage issues in its General Comment and Concluding Observations to States Parties. The Human Rights Committee's General Comment 28 elaborates on the state's commitment to provide equal rights for men and women. It states:

“Inequality in the enjoyment of rights by women is deeply embedded in tradition, history, and culture, including religious attitudes. States parties should ensure that traditional, historical, religious and cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights.”¹³⁴

Through its evaluations of states' compliance with the ICCPR, the Committee highlights the importance of protecting the rights of children and ensuring that laws and policies adequately address child marriage.

3.2 Summary and Answer to Research Question One

In conclusion, IHRL, as reflected in various key instruments such as UDHR, CRC, CEDAW, ICESCR, and ICCPR, obliges states to take comprehensive measures to prevent child marriage using a multifaceted approach. Under UDHR Article 16 (2), states must ensure that marriage is based on both parties' free and full consent, emphasizing mutual agreement and respect. The CRC Articles 24 (3) and 16 (2) oblige states to abolish harmful traditional practices affecting children's health and refrain from recognising or approving marriage involving individuals below the age of adulthood. At the same time, under CEDAW Article 16 (2), states must set a minimum marriage age, preferably 18 years for both genders and enforce compulsory marriage registration. Furthermore, through ICESCR Article 10 (1), 12, and 13, states must protect children's right to education and health, considering their best interest, by addressing the harmful effects of child marriage on these rights. In addition, under CEDAW Article 16 and ICCPR Article 23, states should promote gender equality and combat discrimination against women by condemning child marriage as a form of gender-based discrimination. Through adherence to these obligations, states can effectively prevent child marriage and uphold the rights and dignity of vulnerable groups such as women and children.

¹³³ ICCPR, (1976) Article 23 (3).

¹³⁴ The Human Rights Committee's General Comment 28.

3.3 Legal Approaches to Addressing Child Marriage in Indonesia

3.3.1 The 1945 Constitution of The Republic of Indonesia

To begin this discussion, the Indonesian Constitution is the foundation of a legal document outlining the fundamental rights and protection afforded its citizens. Its provisions contain fundamental values that aim to ensure all individuals' justice, equality, and welfare. This framework includes several vital principles, such as equality before the law and the protection of children. The Indonesian Constitution provides equality before the law in Article 28I and Article 28 H (3). These provisions form the basis for legal safeguards against child marriage.

Article 28I ensures that all individuals, regardless of background, ethnicity, religion, gender, or characteristics, are treated equally before the law. In the case of child marriage, this means that minors must be given the same legal rights and protection as adults.¹³⁵ Child marriage occurs when minors are involved in a marital relationship, which can have severe impacts on their well-being, development, and rights. The Constitutional guarantee of equality before the law seeks to ensure that children are not discriminated against and receive legal protection against harmful practices, including child marriage.

Article 28 B(2) emphasises that every child has the right to survival, growth, and development and is entitled to protection from violence and discrimination.¹³⁶ In addition, Article 28H (3) highlights the state's responsibility to protect children. This provision recognises that children are vulnerable members of society who require additional care, attention, and protection, and child marriage is widely recognised as a harmful practice that violates children's rights, such as the rights to health, education, and protection from exploitation.¹³⁷ This article emphasises the state's responsibility to protect children from harm and promote their well-being.

3.3.2 Law Number 1 of 1974 as Amended by Law Number 16 of 2019 Concerning Marriage

In Indonesia, marriage is fully regulated under Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage (Marriage Law). According to Article 1 of the Marriage Law, marriage is a physical and mental relationship between a man and a woman as husband and wife to create a happy and eternal family founded on the belief in one God.¹³⁸ Every individual has the right to marry, as guaranteed by Article 28B of the 1945 Constitution.¹³⁹ The Constitution ensures the rights of every person to build a family and carry on their descendants through a legitimate marriage. Moreover, a similar provision is also regulated under Article 10 (1) of Law Number 39 of 1999 concerning Human Rights: "Every person has the right

¹³⁵ Indonesian Constitution, Article 28I.

¹³⁶ Ibid, Article 28B (2).

¹³⁷ Ibid, Article 28H (3).

¹³⁸ Marriage Law, Article 1.

¹³⁹ Indonesian Constitution, Article 28B.

to recognition, guarantee, protection, and legal certainty of his/her human rights, which are universal, indivisible, interconnected, and interrelated based on Pancasila and the 1945 Constitution of the Republic of Indonesia".¹⁴⁰ Moreover, Article 52 (1) states that every child has the right to be protected by parents, family, community, and country.¹⁴¹ Children's rights are human rights and in the interest of children's rights are recognised and protected by law even from the womb.¹⁴²

Marriage Law requires all marriages to fulfil specific standards, including age restriction. A valid marriage must satisfy the terms and conditions that applicable laws and regulations have regulated. According to Article 7 (1), marriage is only permitted if the man and woman have reached the age of 19 years.¹⁴³ This means that a man and a woman under 19 years are not allowed to get married. However, there are many problems in society related to early marriage, which occurs when children marry before the minimum age of marriage. According to Child Protection Law, anyone under the age of 18 is still categorised as a child.¹⁴⁴ Even though, in this case, the child can be considered a legal subject, he still needs to be legally competent.

According to the standard on the minimum age requirement of marriage, many child marriages occur in Indonesia due to the impact of tradition and religion.¹⁴⁵ Most cultures and religions allow the community to practice child marriage. This practice has been going on for a long time with many perpetrators, where the factors that cause early marriage are economic problems, low education, cultural understanding, and religious values, as well as being pregnant out of wedlock.¹⁴⁶

In addition to a minimum age deemed too young in the Marriage Law, Article 7 Paragraph (2) provides a dispensation from the provision of Article 7 Paragraph (1) that the minimum age requirement can be accepted if there is permission from the court.¹⁴⁷ The minimum age requirement can be waived if the Court grants permission. This provision allows for certain exceptional circumstances in which individuals under the specified minimum age may be permitted to marry with permission from the court.

¹⁴⁰ Law Number 39 of 1999 concerning Human Rights, Article 10 (1).

¹⁴¹ Ibid, Article 52 (1).

¹⁴² Ibid, Article 52 (2).

¹⁴³ Marriage Law, Article 7 (1).

¹⁴⁴ Child Protection Law, Article 1 (1).

¹⁴⁵ Bagong Suyanto, 'The Causes and Impacts of Early Marriage: the Ordeal of Girls in East Java, Indonesia' (2023) *Sociologia, Problemas e Práticas*, no. 101, 71-94 <<https://doi.org/10.7458/SPP202310126851>> accessed 7 April 2024.

¹⁴⁶ Ibid.

¹⁴⁷ Marriage Law, Article 7 (1).

3.3.3 Law Number 23 of 2002, as Amended by Law Number 35 of 2014 and Law Number 17 of 2016 concerning Child Protection

Law Number 23 of 2002, as amended by Law Number 35 of 2014 and Law Number 17 of 2016, concerning Child Protection (Child Protection Law), is significant in resolving the issue of child marriage in the country. This amendment seeks to increase child safeguards and prohibit early marriage, acknowledging the negative impact it can have on the well-being and development of children.

The amendment highlights the value of free and full consent in marriage. It recognises that individuals should enter marriage willingly, without force or pressure from others. This provision is crucial in protecting children from forced marriages, where they may be forced to marry against their will due to family or cultural pressure.

The Child Protection Law highlights the role of parents in safeguarding their children from harm, including the harmful practice of child marriage. According to Article 26 Paragraph (1) of the Child Protection Law, “Parents are obliged to prevent marriage at the age of children”.¹⁴⁸ Children should be protected, not become victims of early marriage.

3.3.4 International Norms

Indonesia ratified the CRC on 5 September 1990 with Presidential Decree Number 36 of 1990. With the signing of the CRC, Indonesia legally fulfils its obligations to protect the fundamental rights of children. The Indonesian government strengthened this ratification by passing a Child Protection Law based on the rule of law to protect children. Indonesia also officially ratified the CEDAW on 24 July 1984 through Law Number 7 of 1984 concerning the Ratification of the CEDAW, which obligates states to ensure free and full consent to marriage. CEDAW – CRC Joint General Recommendation states that child marriage occurs whenever one of the parties to a marriage is under 18. In addition, Indonesia has ratified ICESCR by Law Number 11 of 2005 concerning the Ratification of ICESCR. As a result, Indonesia is legally bound by obligations from the ICESCR, and the country must follow through on those obligations. Moreover, Indonesia also ratified the ICCPR on 28 October 2005 through Law Number 12 of 2005 concerning Ratification of the ICCPR. The ratification of such treaties marks an important milestone in promoting and protecting human rights for all citizens of Indonesia.

In addition, Indonesia, as a UN member country, has complied with the SDGs document. Indonesia has taken a role in implementing the SDGs by Presidential Regulation Number 59 of 2017 concerning the Achievement of Sustainable Development Goals. Indonesia has shown its commitment to complying with the UN to eradicate child marriage as an initial step toward achieving the SDGs, particularly Goal 5.

¹⁴⁸ Child Protection Law, Article 26 (1c).

In summary, legal approaches in Indonesia to addressing child marriage encompass a multifaceted framework, beginning with constitutional guarantees of equality before the law and the responsibility of the state to protect children. The 1945 Constitution establishes fundamental principles safeguarding individual's rights and well-being, ensuring equality and protecting minors against harmful practices such as child marriage. The Marriage Law sets a minimum marriage age of 19 for men and women. Still, child marriage persists due to cultural and religious influences, prompting provisions for court dispensation from the age requirement. Moreover, the Child Protection Law reinforces protection against early marriage, emphasising the importance of free and full consent in marriage and the role of parents in preventing this practice.

4 The Indonesian Legal Landscape and Compliance with International Human Rights Law

This chapter will answer the second and third research questions with an in-depth exploration of the Indonesian legal framework with a focus on the critical issue of child marriage. It undertakes a deep examination of the multifaceted Indonesian legal system, deconstructing the different laws, regulations, and customary practices that intersect with the phenomenon of child marriage. Divided into three sub-chapters, it examines the existing legislative system surrounding child marriage, evaluating its effectiveness and compliance with international human rights standards. Moreover, the chapter assesses the alignment of Indonesian laws with international human rights standards, such as CRC, CEDAW, ICESCR and ICCPR, examining the extent to which Indonesian legal frameworks are consistent with these international human rights norms. Additionally, it undertakes a critical study of the challenges that prevent legislation implementation to reduce child marriage in Indonesia.

4.1 Examination of Existing Laws and Regulations Related to Child Marriage in Indonesia

4.1.1 Constitutional and International Legal Context

The Indonesian Constitution serves as the foundation of Indonesia's legal system, outlining the fundamental rights and safeguards guaranteed to the citizens, including equality before the law (Article 28I) and child protection (Article 28H (3)). However, it is essential to note that while the Constitution protects these fundamental rights, it does not include explicit regulations prohibiting child marriage. The consequences of the absence of explicit provisions addressing child marriage will provide room for challenges of interpretation and implementation. Although there are other laws and regulations in Indonesia that regulate marriage and child safety, the absence of specific constitutional provisions concerning child marriage can create uncertainty and inconsistency in legal efforts to eradicate this practice.

In addition, Indonesia's commitment to protecting children's rights and eliminating gender discrimination has gone beyond its national borders with the ratification of international treaties such as CRC, CEDAW, ICESCR, and ICCPR. In this regard, Indonesia is bound by a series of commitments deriving from these international covenants. These treaties impose obligations on the Indonesian government to take specific steps to protect children and women from harmful practices such as child marriage.

4.1.2 Law Number 1 of 1974 as Amended by Law Number 16 of 2019 Concerning Marriage

In 1973, when the government submitted the draft Bill of the Marriage Law to Parliament, one of its aims was to increase women's rights in marriage.¹⁴⁹ However, several Islamic organisations and the Islamic party PPP (Partai Persatuan Pembangunan) actively opposed the bill, arguing that it was very "modern". They walked out of the parliamentary sessions, leading the government to conclude that the potential cost of pushing through the bill would be too risky.¹⁵⁰ The government recognises the importance of accommodating diverse marital traditions and their underlying norms.¹⁵¹ As a result, the government modified several draft articles, including the marriageable age to 16 for women and 19 for men. The initial draft requested that the minimum marriage age be 18 for women and 21 for men.¹⁵²

Various issues that arose from child marriages became the reason for multiple parties to submit a judicial review of Marriage Law in the Constitutional Court in 2014 and 2017. During the 2014 judicial review, the applicant challenged Article 7 (1) Marriage Law regarding the phrase "16 years old" violated Article 28A, 28B (1-2), 28C (1), 28D (1), 28G (1), 28H (1-2), and 28I (1-2) of the 1945 Constitution.¹⁵³ The Constitutional Court dismissed all petitions. The Constitutional Court ruled that establishing a minimum age restriction constituted an open legal policy. The age restriction for marriage, particularly for women, can be adjusted to accommodate health, social, and economic changes.¹⁵⁴ The Constitutional Court suggests a parliamentary review procedure to modify the age restriction.¹⁵⁵

This provision was again tested in 2017 by women's and youth organisations using Article 27 (1) of the 1945 Constitution, which addressed equality before the law. In this second trial, the Constitutional Court partially approved the applicant's plea, concluding that Article 7 (1) of the Marriage Law violates the 1945 Constitution.¹⁵⁶ The Constitutional Court believes legislators should not discriminate based on gender when defining the minimum marriage age.¹⁵⁷ In 2019, the Indonesian government revised the Marriage Act, raising the minimum age for girls to marry to 19 years old – the same age as boys.¹⁵⁸

¹⁴⁹ Sebastiaan Pompe & Jan Michiel Otto, 'Some Comments on Recent Developments in the Indonesian Marriage Law with Particular Respect to the Rights of Women' (1990) 23 *Verfassung und Recht in Übersee Law and Politics in Africa, Asia and Latin America* 15-33.

¹⁵⁰ Mark Cammack & Michael R. Feener, 'The Islamic Legal System in Indonesia' (2012) 21 *Pacific Rim Law & Policy Journal* 13-42 <<https://digitalcommons.law.uw.edu/wilj/vol21/iss1/5>> accessed 6 April 2024)

¹⁵¹ *Ibid.*

¹⁵² The Draft Marriage Law of 1973, Art. 7(1): "marriage is permitted only if the male has reached the age of 21 years and the female has reached the age of 18 years."

¹⁵³ The Constitutional Court Decision No. 30-74/PUU-XII/2014, 11-20.

¹⁵⁴ *Ibid.*, 207-221.

¹⁵⁵ *Ibid.*, 234.

¹⁵⁶ The Constitutional Court Decision No. 22/PUU-XV/2017, 3.

¹⁵⁷ *Ibid.*, 41.

¹⁵⁸ Marriage Law, Article 7 (1).

According to Marriage Law, marriages in Indonesia must be registered according to relevant laws and regulations.¹⁵⁹ Registering marriage in Indonesia involves multiple institutions that have their roles: the civil court handles non-Muslim marriages and divorces while the religious court has authority and jurisdiction over Muslim marriages and divorces.¹⁶⁰ To register marriages and divorces, couples visit different subdistrict offices: non-Muslims go to the Civil Registration Office (Kantor Catatan Sipil) and Muslims go to the Office of Religious Affairs (Kantor Urusan Agama).

Religious and civil courts can authorise underage marriages by granting marriage dispensation, which raises legal concerns regarding the protection of minor's rights and well-being. Article 7 (2) of Marriage Law states that "if there is a deviation from the age provisions, the parents of the man or woman are permitted to apply for a marriage dispensation to the Court for urgent reasons and accompanied by supporting evidence".¹⁶¹ This is the legal basis for the judge's decision to grant a marriage dispensation request. The term "deviation" refers to submitting a request for dispensation by the parents of one or both parties of the prospective bride and groom if the parties are under the age of 19.¹⁶² Furthermore, "very urgent reasons" refer to circumstances with no other option, and the marriage must occur.¹⁶³ Consequently, the court provided legality for men and women who married underage, given a marriage dispensation. However, when deciding the permissibility of early marriage, judges in handling cases must consider the reasons and factors experienced by the applicant, where the judge can investigate new ideas and concepts if the regulations governing them are present in the case.¹⁶⁴

As the article does not set any conditions or requirements for judges to grant dispensations, it gives significant discretion to judges. As a result, the government, in this case, the Supreme Court, established additional requirements for the efficient administration of justice by enacting PERMA Number 5 of 2019 concerning Guidelines for Passing Judicial Request for Marriage Dispensation. Article 1 (5) states that the court gives marriage permission to a prospective husband/wife under 19. A report from Plan International indicated that over 90% of marriage dispensation cases are accepted.¹⁶⁵ According to this research, pre-marital sexual relations are the most powerful cause for judges to grant dispensations, protecting girls from social stigma if they have already engaged in sexual intercourse.¹⁶⁶ Therefore, judges try to protect girls from societal pressure by granting dispensation as

¹⁵⁹ Ibid, Article 2 (2).

¹⁶⁰ Mark Cammack & Michael R. Feener, 'The Islamic Legal System in Indonesia' (2012) 21 *Pacific Rim Law & Policy Journal* 13-42.

¹⁶¹ Ibid.

¹⁶² The General Comment of the Marriage Law, (2019) Article 7 (2).

¹⁶³ Ibid.

¹⁶⁴ The General Comment of the Marriage Law, (2019) Article 7 (3).

¹⁶⁵ Mark Evenhuis & Jeniffer Burn, 'Just Married, Just A Child: Child Marriage in the Indo-Pacific Region' (2014) Report, Melbourne: Plan International Australia, 37.

¹⁶⁶ Hoko Horii, 'Uncovering Difficulties in the Implementation of International Human Rights Laws in the Indonesian Pluralistic Legal System: Issue of Child Marriage in West Java' (2015) Nagoya University, 24.

well as to protect their unborn children, who might be labelled as illegitimate children.¹⁶⁷

In court decisions, judges frequently cited Islamic Law as often as state law, even though they have never implemented a single aspect of the Indonesia Child Protection Law or IHRL.¹⁶⁸ Thus, judges in religious courts facilitate legitimate underage marriages.¹⁶⁹ However, dispensations are estimated to account for just about 8% of child marriages in Indonesia.¹⁷⁰ Although dispensation is the cause of cases of child marriage, many other factors contribute to the prevalence of child marriage, including cultural practice, lack of awareness of legal requirements, and lack of enforcement.

One example of a court decision permitting early marriage comes from the Religious Court of Ambarawa Regency. A judge decision number 0010/Pdt.P/2014/PA.Amb allowed for an early marriage under the following conditions: A sample from the court's decision above demonstrates that the threshold for the judges to grant a dispensation is exceedingly low. In that case, the judges concluded that the bride was ready to be a decent housewife based on a written statement only. They did not specifically evaluate whether the bride's fundamental right had been violated, nor did they explain why the bride made her remark. Taking the considerations mentioned above into mind, it is clear that there are severe issues with the effectiveness of Indonesian legislation prohibiting child marriage.

Changes in the marriageable age to 19 for both men and women have significantly increased the number of applications for marriage dispensations in various regions in Indonesia.¹⁷¹ When dispensations are approved and allow underage individuals to marry with special permission from relevant authorities, they create an exception to existing laws or regulations regarding the minimum age of marriage.¹⁷² In certain cases, this exception may seem well-intentioned or culturally acceptable, but it creates a loophole in the law that allows underage individuals to marry. This jeopardises efforts to enforce the overall legal framework designed to prevent child marriage.

In addition, the possibility of dispensation effectively allows underage individuals to bypass legal restrictions regarding marriage by getting special permission or exemptions. By providing legal mechanisms for underage individuals to marry, dispensation also contributes to the normalising of child marriage in society. When dispensations are consistently granted, it conveys

¹⁶⁷ Ibid.

¹⁶⁸ Rina Shahriyani Shahrullah, et al, 'Dilemmas Faced by Judges when Granting Marriage Dispensations for Child Marriages in West Java, Indonesia' (2023) 37(1) *International Journal of Law, Policy and the Family* ebad035 <<https://doi.org/10.1093/lawfam/ebad035>> accessed 9 April 2024.

¹⁶⁹ Ibid.

¹⁷⁰ Jewel Topsfield & Amilia Rosa, 'Child Brides: Why Underage Girls Are Marrying in Indonesia' (2017) <<http://www.smh.com.au/world/child-brides-why-underage-girls-are-marrying-in-indonesia-20170912-gyg6p8.html>> accessed 5 April 2024.

¹⁷¹ Salmah Mursyid, "Changes in Marriage Age Limits and Marriage Dispensations: A Study of Causes and Impacts on the Religious Courts in North Sulawesi" (2022) 6(2) *Samarah: Journal of Family Law and Islamic Law* 979 <<https://doi.org/10.22373/sjhk.v6i2.12439>> accessed 29 April 2024.

¹⁷² Ibid.

a message that child marriage is allowed in certain circumstances, with the result that underage persons tend to apply for dispensations.

Furthermore, when dispensation is granted, they undermine the deterrence and the enforcement mechanism by establishing legal precedents for making exceptions.¹⁷³ Even if existing laws prohibit child marriage, the availability of dispensations may result in a lack of enforcement or reluctance on the part of authorities to act in cases where underage marriage is authorised under certain conditions. Authorities may be less likely to intervene in cases of underage marriage if they believe that dispensations provide a legitimate foundation for such unions, thereby hindering efforts to enforce current legal protections for children.

Moreover, In many circumstances, dispensations are given based on cultural or religious beliefs that value traditional practice over legal provisions.¹⁷⁴ This cultural and religious influence can persuade legal authorities to issue dispensations. Granting dispensations weakens the state's power to regulate child marriage regulations consistently. It allows other entities, such as religious institutions or community leaders, to exercise influence over marriage practices that may contradict national law and policies aimed at avoiding child marriage.

In international matters, by granting dispensation for child marriage, Indonesia may be perceived as falling short of international norms and obligations to protect children's rights. This might harm one's image and make it difficult to access international aid and support for combating child marriage. In contrast, international human rights standards advocate for eliminating such exceptions to ensure the adequate protection of children from harmful practices.

Overall, the provisions of dispensations weaken enforcement mechanisms, perpetuate cultural and religious influence, normalise exceptions to the law, and undermine international norms aimed at preventing child marriage. As a result, attempts to prevent child marriage are hindered and the rights and well-being of children are compromised.

4.1.3 Law Number 23 of 2002, as Amended by Law Number 35 of 2014 and Law Number 17 of 2016 concerning Child Protection

The Child Protection Law is an important law designed to protect children's rights in Indonesia. It includes various provisions that are sensitive to the subject of child marriage, such as a provision defining the minimum age for a person to be considered a child and the obligation of parents to protect their child's rights. Article 1 (1) states that a person is regarded as a child if they

¹⁷³ Ibid, 998-991.

¹⁷⁴ Rina Shahriyani Shahrullah, et al, 'Dilemmas Faced by Judges when Granting Marriage Dispensations for Child Marriages in West Java, Indonesia' (2023) 37(1) *International Journal of Law, Policy and the Family* ebad035 <<https://doi.org/10.1093/lawfam/ebad035>> accessed 9 April 2024.

are under 18 years old.¹⁷⁵ Child marriage is logically defined as a marriage in which one of the partners is under 18. Another important aspect of Child Protection Law is its provisions for parental obligation. According to Article 26 (1c), parents are solely responsible for preventing and prohibiting underage marriage. Parents have an essential role in preventing child marriage as, most of the time, they are usually in charge of their children.¹⁷⁶

In addition, The Child Protection Law provides laws for protecting children from violence, exploitation, and abuse and establishes principles to ensure children's well-being and rights in Indonesia. The law includes rules to protect children from many types of violence, exploitation, and abuse, including physical, emotional, and sexual assault.¹⁷⁷ These clauses indicate Indonesia's commitment to support IHRL governing children's rights.

While this law addresses a wide range of issues related to children, it does not go into detail about child marriage. While child marriage can be considered exploitation and abuse, there are no explicit provisions that prohibit child marriage, such as defining a minimum marriage age or creating mechanisms to prevent and resolve child marriage.

The legal norms of Child Protection Law contain child protection issues. However, this law explicitly does not provide a provision for child protection in case of marriage dispensation in a court. Additionally, the legal norms of the Marriage Law regulate the subjects of marriage dispensation. However, the provision regarding dispensation solely prioritises the marriage rules. It does not encompass the spirit of child protection, as indicated by the lack of any reference to child protection in those norms, neither implicitly nor explicitly. If we examine both the Child Protection Law and the Marriage Law, apart from not containing provisions that specifically regulate child protection measures in the marriage dispensation, these two laws also do not give authority to law enforcement officials to determine steps to fulfill the legal objectives of child protection in the marriage dispensation.¹⁷⁸

The examination of existing law related to child marriage in Indonesia reveals significant gaps and contradictions within the legal system. While constitutional and international commitments underscore the importance of protecting children's rights and eliminating harmful practices, including child marriage, domestic law exhibits inconsistencies. Despite amendments raising the minimum marriage age, the Marriage Law permits dispensations undermining these protections, perpetuating cultural and religious influence and normalising exceptions to the law. Overall, the existing legislative landscape in Indonesia does not provide a consistent and sufficient framework for effectively preventing child marriage and safeguarding the rights and well-being of children.

¹⁷⁵ Child Protection Law, Article 1 (1).

¹⁷⁶ Ibid, Article 26 (1c).

¹⁷⁷ Ibid, Article 15.

¹⁷⁸ Jewel Topsfield & Amilia Rosa, 'Child Brides: Why Underage Girls are Marrying in Indonesia' (2017) <<http://www.smh.com.au/world/child-brides-why-underage-girls-aremarrying-in-indonesia-20170912-gyg6p8.html>> accessed 5 May 2024.

4.2 Evaluation of the Alignment of Indonesian Laws with International Human Rights Law

4.2.1 Compliance with the Convention on the Rights of the Child (CRC)

The CRC is a foundational international convention that affirms all children's inherent dignity and rights.¹⁷⁹ Article 24 of the CRC particularly emphasises the right of every child to the highest attainable standard of health. It mandates signatory parties to make active efforts to eliminate traditional practices that are harmful to children's health.¹⁸⁰ Child marriage, with its potential for negative health consequences and psychological suffering, clearly opposes this ideal.¹⁸¹

Despite the lack of limitation under the CRC regarding child marriage, the CRC Committee addressed the problem in General Comment No. 4 of 2003. The Committee stated that state parties must determine a minimum marriage age that should be the same for both boys and girls and closely aligns with the recognition of the status of human beings under 18 years old as rights holders.¹⁸² The CRC Committee observed that the marriageable age was extremely low in numerous countries and strongly advised state parties to revise their legislation and raise the minimum age to 18. In doing so, the Committee referred to the recommendation made by the CEDAW Committee in its General Recommendation No. 21.¹⁸³

In 2008, UNICEF published a report about "Child Marriage and the Law". This report refers to Article 24 (3) of the CRC, which requires state parties to abolish traditional practices of children's health, including child marriage.¹⁸⁴ It also refers to the Human Rights Committee's General Comment 28, which states that inequality in the enjoyment of rights by women is deeply embedded in tradition, history, and culture, including religious attitudes; the CEDAW Committee which expressed its concern about traditional customs and practice detrimental to women and girls, such as child marriage; and the ICCPR Concluding Comments, which suggests taking action to prevent specific tradition and customs, such as force marriage that is inconsistent with the equal rights of women.¹⁸⁵

¹⁷⁹ Allison James, Alan Prout, *A New Paradigm for the Sociology of Childhood? Provenance, Promise and Problems*. In A. James & A. Prout (Eds.), *Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood* (Falmer Press, 1997) 7–33.

¹⁸⁰ CRC, (1989) Article 24.

¹⁸¹ Neetu A. John, et al, 'Child marriage and psychological well-being in Niger and Ethiopia' (2019) 19 BMC Public Health 1029, <https://doi.org/10.1186/s12889-019-7314-z> (accessed 9 April 2024).

¹⁸² See CRC General Comment 4, 'Adolescent Health and Development in the Context of the Convention of the Rights of the Child', (Thirty-third session), 1 July 2003, CRC/GC/2003/4, para. 9.

¹⁸³ *Ibid*, para. 20.

¹⁸⁴ Rangita De Silva De Alwis, 'Child Marriage and the Law: Legislative Reform Initiative PaperSeries' (2008) UNICEF, 22.

¹⁸⁵ *Ibid*, p. 14.

Child marriage, defined as marriage before the age of 18, is a violation of children's rights as recognised by the CRC. According to Article 1, a child is defined as someone under 18 unless the child reaches majority earlier under the relevant legislation. The CRC prohibits state parties from authorising or granting legality to a marriage between individuals who have yet to reach their majority.¹⁸⁶

The practice of child marriage is contrary to the CRC, where the Convention has the basic principles.¹⁸⁷ Firstly, children shall have the right to special protection and have the opportunity to develop themselves physically, psychologically, morally, spiritually, and socially in a healthy and normal situation according to their freedom and dignity. Next, children are entitled to free compulsory education, at least at the primary level and have the protection which may increase their knowledge or enable them to develop their capacities to become valuable members of society. Children also have the freedom to play and recreate for educational purposes. Under no circumstances shall the children take precedence in receiving protection and help. Children also shall be protected from as a form of omission, violence, and exploitation.

In alignment with its obligation under the CRC, Indonesia has implemented legal measures to address the issue of child marriage. Adopting a minimum marriage age under the Marriage Law, expressly set at 19 years old for both genders, is an important legal mechanism to protect children's rights and well-being. This clause resonates deeply with the core principle enshrined in the CRC, which serves as a basis of IHRL about children's rights. By explicitly setting a minimum marriage age, Indonesian law recognises the inherent risk involved with early or forced marriages, particularly in terms of children's physical, mental, and emotional development. This acknowledgement demonstrates Indonesia's commitment to protecting children from practices that may limit their ability to enjoy their rights to education, health, and protection from exploitation and abuse, as outlined in the CRC.

However, this legal improvement still fails to fully align with IHRL as recommended by the CRC. Child marriage remains prevalent in Indonesia, particularly in specific regions and communities where socio-cultural norms perpetuate the practice, as well as a lack of awareness about the negative consequences of early marriage.¹⁸⁸ One significant factor contributing to the persistence of child marriage in Indonesia is the presence of legal exceptions that allow child marriage with parental consent and approval from courts.

The CRC, a universally accepted treaty, strongly recommends setting the minimum age of marriage at 18 years old without exceptions to protect minors from the negative consequences of early marriage. The United Nations

¹⁸⁶ CRC, (1989) Article 16(2).

¹⁸⁷ Fadhilah Rizky Afriani Putri, "When Girl Become Wives: The Portrait of Underage Marriage in Indonesia" (2020) 2(4) *The Indonesian Journal of International Clinical Legal Education* <<https://doi.org/10.15294/ijicle.v2i4.43155>> accessed 5 May 2024.

¹⁸⁸ Jewel Topsfield & Amilia Rosa, 'Child Brides: Why Underage Girls Are Marrying in Indonesia' (2017) 469-470 <<http://www.smh.com.au/world/child-brides-why-underage-girls-aremarrying-in-indonesia-20170912-gyg6p8.html>> accessed 5 May 2024.

Committee on the Rights of the Child has urged Indonesia's government to take immediate measures to strengthen protection for girls from all types of violence, including child marriage.¹⁸⁹ While Indonesian legislation indicates progress, it falls short of this standard because there is no general restriction on underage marriage. Allowing exceptions to the minimum age requirement, as demonstrated in Indonesia's legal regulations, creates loopholes that weaken the intended safeguards. Such exceptions can be exploited, especially when cultural or religious standards prioritise early marriage. As a result, vulnerable persons, particularly girls, may be pressured into marriage before they are physically, emotionally, or cognitively prepared.¹⁹⁰

The presence of exceptions in Indonesian law regarding the minimum age of marriage poses a significant challenge to the country's efforts to fully comply with international human rights standards, particularly in terms of protecting children from harmful practices, including child marriage. The option for exceptions to the minimum age of marriage with parental consent and court dispensation opens the door to exploitation and abuse. While parental permission appears innocent on the surface, it can mask situations where children, particularly girls, are coerced or pressured into marriage by their families.¹⁹¹ This contradicts the concept of free and informed consent, a fundamental principle in international human rights standards, including CRC, which emphasises the importance of protecting children from exploitation and ensuring their involvement in decisions that affect them.

4.2.2 Compliance with the Convention on the Elimination of All Forms of Discrimination Against Women

Article 16 of the CEDAW expressly prohibits discrimination against women in marriage and family issues, underlining the need to establish gender equality and preserve women's rights in these areas.¹⁹² Child marriage is classified as gender-based discrimination under CEDAW due to its disproportionate impact on girls' rights and well-being.¹⁹³ Imposing marriage on a child is a form of discrimination against girls because it assumes that girls do not need to attend higher education because they only become administrators in the household. It does not provide equal opportunities for children to enjoy their childhood and receive a good education as boys.¹⁹⁴

¹⁸⁹ United Nations Committee on the Rights of the Child, 'Concluding observations on the combined third and fourth periodic reports of Indonesia' (2014) CRC/C/IDN/CO/3-4.

¹⁹⁰ Salmah Mursyid, 'Changes in Marriage Age Limits and Marriage Dispensations: A Study of Causes and Impacts on the Religious Courts in North Sulawesi' (2022) 6(2) *Samarah: Journal of Family Law and Islamic Law* 996 <<https://doi.org/10.22373/sjhc.v6i2.12439>> accessed 29 April 2024.

¹⁹¹ *Ibid.*

¹⁹² CEDAW, (1979) Article 16.

¹⁹³ Hendrik Rönsch, 'Effectiveness of Laws and Policies Governing Permissive Parenting in Pursuit of the Reduction of Severe Child Abuse in Germany' (2020) 119 *Children and Youth Services Review* 105510 <<https://doi.org/10.1016/j.childyouth.2020.105510>> accessed 19 April 2024.

¹⁹⁴ *Ibid.*

Article 16 (1) states that state parties shall take all required measures to eliminate discrimination against women in all aspects of marriage. States must ensure that men and women have equal rights to enter marriage only with free and full consent, choose a spouse freely, and have the same rights and obligations during and after marriage.¹⁹⁵

The CEDAW Committee addressed equality in marriage in General Recommendation No. 21. The Committee criticised how the provisions of Article 16 were applied by the state parties, particularly regarding the widespread discriminatory customs based on cultural or religious arguments.¹⁹⁶ A woman's right to choose a spouse and marry freely is fundamental to her existence and her dignity and equality as a human being. A review of the records of state parties reveals that certain countries allow forced marriages based on cultural, traditional, and religious beliefs.¹⁹⁷

Article 16 of CEDAW emphasises the fundamental premise that marriage should only be entered into with the free and full consent of both parties and should not result in women's subordination. Child marriage inherently violates this principle by depriving girls of their autonomy and exposing them to unequal power relations inside the marriage. It reinforces harmful gender stereotypes and prevents girls from fully exercising their rights to education, health, and self-determination. This provision requires state parties to enact legislation and other measures to promote equality in marriage and family relations, including measures to prevent and address child marriage. This can involve legislation reforms to establish a minimum marriage age, raising awareness about the negative consequences of child marriage, providing support services to at-risk individuals, and promoting education and economic opportunities for girls.

According to the Article 16 mentioned above means that all the points provided by the article can be considered as the right of women while entering into marriage, as Article 16 of the CEDAW explicitly stated.¹⁹⁸ According to Article 16, underage marriage cannot be imposed because it violates the CEDAW.

CEDAW highlights the need to eliminate discrimination against women in all aspects of life, including marriage and family ties.¹⁹⁹ Despite progress in passing laws to combat gender-based discrimination, obstacles remain in ensuring effective enforcement and implementation of these laws, particularly in situations involving child marriage. Child marriage disproportionately impacts girls and reinforces gender inequality by denying them access to education, personal growth, and economic empowerment.²⁰⁰ Although Indonesian laws include measures to prohibit child marriage and protect girls' rights, law enforcement mechanisms and awareness-raising

¹⁹⁵ CEDAW, (1979) Article 16 (1).

¹⁹⁶ CEDAW General Recommendation 21, 'Equality in Marriage and Family Relations', (Thirteenth Session), 4 February 1994, UN Doc. HRI/GEN/I/REV.1 AT 90, paras. 11-39.

¹⁹⁷ *Ibid*, para. 16.

¹⁹⁸ Rangita De Silva De Alwis, 'Child Marriage and the Law: Legislative Reform Initiative PaperSeries' (2008) UNICEF.

¹⁹⁹ CEDAW, (1979) Article 16.

²⁰⁰ Murphy-Graham, Erin, and Graciela Leal, 'Child Marriage, Agency, and Schooling in Rural Honduras' (2015) 59(1) *Comparative Education Review*, 24-49.

initiatives are sometimes insufficient to address the underlying causes of this harmful practice.

In addition, cultural and societal traditions that prioritise early marriage for girls present major challenges in achieving gender equality and eliminating discrimination.²⁰¹ Overcoming these beliefs requires comprehensive strategies that promote gender-sensitive education, empower women and girls, and challenge harmful gender stereotypes and norms. To ensure full compliance with international standards, Indonesia must strengthen its legal framework and law enforcement mechanisms to address gender-based discrimination, including child marriage.

Moreover, the establishment of a minimum age for marriage represents a deliberate effort to promote gender equality and prevent discriminatory practices within the marital institution. This approach aligns with broader IHRL, including those outlined in the CEDAW. By rejecting gender-based disparities in the minimum age of marriage, Indonesian law affirms the principle of equal rights and opportunities for all individuals, regardless of gender. In addition, setting a minimum age for marriage serves as a proactive measure to prevent situations where children, particularly girls, are pressured or pushed to marry against their choice. Indonesian law established a legal threshold for marriage, creating a protective barrier that allows adolescents to exercise autonomy and make decisions about their future without pressure.

The minimum marriage age demonstrates a solid commitment to protecting children's rights and dignity under IHRL. It represents a realisation of the necessity of protecting children from this practice and promoting gender equality within the institution of marriage, therefore contributing to the broader global efforts to ensure the well-being and rights of all children.

4.2.3 Compliance with the International Covenant on Economic, Social, and Cultural Rights

Through the ICESCR, some norms in the UDHR regarding economic, social, and cultural rights may become binding to the states that choose to ratify it. Although the ICESCR does not directly mention child marriage, its provisions can be interpreted and applied to address this issue within the broader framework of human rights.

Article 10 of the ICESCR principally addresses the protection and assistance of families. However, paragraph 1 stipulates that marriage must be entered with the free consent of the intending parties, mirroring Article 16 of UDHR.²⁰² This provision emphasises the fundamental human freedom of individuals to make independent decisions about their personal lives, including the option to marry. The requirement for “free and full consent” emphasises the importance of providing consent without undue influence or pressure from others, such as family members or cultural norms. It maintains

²⁰¹ Spence, N., & Lan, N. T. T., ‘Family Sustainability and Child Protection in Vietnam’ (2021) 122 *Children and Youth Services Review* 105884 <<https://doi.org/10.1016/j.childyouth.2020.105884>> accessed 29 April 2024.

²⁰² ICESCR (1966) Article 10 (1).

the idea that people are free to make their own decisions regarding their personal lives, including the decision to marry. This article has significant implications for protecting the rights and dignity of individuals, particularly vulnerable groups such as women and minors who may be subjected to forced marriages. When it comes to child marriage, the majority of children do not entirely understand the responsibility that comes after marriage because they only obey their parents. Minor lacking mature appreciation of the critical information in a contract or other difficult situations cannot sign a legally binding agreement.²⁰³

However, examining the requirement for consent within the Indonesian legal system reveals a potential misalignment with IHRL. Indonesian law often requires parental consent for marriage, particularly for underage individuals. For instance, the Child Protection Law highlights the role of parents in safeguarding their children from harm, including the harmful practice of child marriage.²⁰⁴ Indonesian law's reliance on parental consent reflects a cultural and familial emphasis on parental authority and participation in decision-making processes, including marriage.

While parental assistance might be beneficial, it is essential to understand that underage individuals may lack the maturity or autonomy to make decisions, including those related to marriage.²⁰⁵ Children may lack the maturity or autonomy necessary to make informed decisions.²⁰⁶ The dependence on parental approval under Indonesian law may not adequately ensure that marriages are entered into with the free and informed consent of the individuals involved, especially when children are involved. This misalignment between Indonesian legal practice and IHRL raises concern about the protection of the rights of individuals, particularly children, in the context of marriage. The requirement for parental consent may inadvertently weaken the rights of minors, particularly in cases where family pressure or cultural norms influence the decision to marry.²⁰⁷

Legal frameworks must balance respecting parental roles and safeguarding the rights and autonomy of minors, aligning with IHRL. To address this gap in the Indonesian legal framework, the standards for marital consent may need to be revisited, ensuring that they are consistent with international treaties and emphasise minor's rights and best interests.

²⁰³ Yuya Kudo, 'Does Criminalizing Discriminatory Cultural Practices Improve women's Welfare? A Simple Model of Levirate Marriage in Africa' (2021) 199 *Economics Letters* 109728 <<https://doi.org/10.1016/j.econlet.2021.109728>> accessed 20 March 2024).

²⁰⁴ Child Protection Law, Article 26 (1) c.

²⁰⁵ Geraldine Van Bueren 'Children Rights' in Daniel Moeckli, Sangeeta and Sandesh Sivakumaran (eds), *International Human Rights Law* (3rd edn, Oxford University Press 2018), 330.

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.*, 330-331.

4.2.4 Compliance with the International Covenant on Civil and Political Rights

To evaluate the compliance of the Indonesian legal framework concerning child marriage with the ICCPR, we need to examine how the Indonesian law addresses critical provisions of the ICCPR related to marriage and children's rights. One key aspect of compliance with the ICCPR is ensuring that the right to marry is exercised with free and full consent.²⁰⁸ Article 23 of ICCPR is almost identical to Article 16 of the UDHR, although it is structured differently. In compliance with the Indonesian legal framework, Indonesia's Marriage Law sets the legal age of marriage at 19 for men and women.²⁰⁹ However, a court's permission can make exceptions for marriages below this age. This raises concern about the ability of minors to give free and informed consent, mainly if they are pushed or pressured into marriage. Furthermore, cultural practice may undermine the ability of minors, particularly girls, to provide genuine consent.

Indonesia's Child Protection Law aligns more closely with the ICCPR's provisions on children's rights. The Child Protection Law prohibits child marriage and stipulates that marriage under the legal age is unlawful. It also includes strategies for preventing, protecting, and rehabilitating child victims of abuse, exploitation, and neglect. However, enforcement and execution of these restrictions remain challenging, especially in isolated or traditional areas where child marriage is common.²¹⁰

4.3 Identification of Challenges in Implementation within the Indonesian Legal Framework

4.3.1 Weak Enforcement Mechanisms

Law enforcement in Indonesia faces major challenges, especially in certain regions where limited access to justice, awareness and resources hinder effective implementation.²¹¹ Although there is a legal framework aimed at preventing child marriage and protecting children's rights, its implementation often fails, thereby exacerbating the incompatibility between national laws and IHRL.

One of the important problems in enforcement and implementation is the unequal distribution of resources and capacity between regions in Indonesia. Rural and remote areas, where child marriage rates tend to be higher, often lack the infrastructure, qualified staff, and institutional support to handle child

²⁰⁸ ICCPR, Article 23.

²⁰⁹ Marriage Law, Article 27 (1).

²¹⁰ Salmah Mursyid, "Changes in Marriage Age Limits and Marriage Dispensations: A Study of Causes and Impacts on the Religious Courts in North Sulawesi" (2022) 6(2) *Samarah: Journal of Family Law and Islamic Law* 976 <<https://doi.org/10.22373/sjhk.v6i2.12439>> accessed 29 April 2024.

²¹¹ Hoko Horii, 'Uncovering Difficulties in the Implementation of International Human Rights Laws in the Indonesian Pluralistic Legal System: Issue of Child Marriage in West Java' (2015) Nagoya University, 24.

marriage cases effectively.²¹² These resource gaps perpetuate disparities in access to justice and protection, resulting in vulnerable children not receiving adequate support.

Furthermore, the diversity of legal systems and jurisdictions in Indonesia can hinder coordination and collaboration between relevant institutions responsible for handling child marriage. Differences in the interpretation of religious and customary rules and overlapping responsibilities between central and regional governments can cause anomalies in implementing and enforcing legal provisions regarding child marriage. This lack of coherence and coordination undermines efforts to ensure consistent protection for children in Indonesia.

Additionally, social and economic factors, such as poverty, lack of access to education, and gender inequality, exacerbate problems with law enforcement and implementation.²¹³ Children from marginalised communities, including indigenous peoples and ethnic minorities, are particularly vulnerable to child marriage due to systemic barriers that limit their access to essential services and opportunities for socio-economic advancement.²¹⁴

Ensuring the effectiveness of laws and regulations aimed at combating child marriage depends critically on the strength and efficiency of law enforcement mechanisms. Weak law enforcement, caused by various problems, including lack of resources, corruption, and limited capacity of relevant government authorities, creates significant difficulties in preventing child marriage and protecting victims.

The effectiveness of law enforcement mechanisms must be evaluated in a broader socio-economic and institutional context. In many situations, funding and resources provided to law enforcement agencies are insufficient, limiting their capacity to address incidents of child marriage effectively. Additionally, corruption within these organisations can worsen the situation, causing inconsistencies in law enforcement processes and hindering justice for victims.

Moreover, the complexity of child marriage cases, which often involve complex family dynamics and socio-cultural influences, underscores the need for specialist competence in law enforcement officials.²¹⁵ Without adequately trained personnel to handle these cases effectively, the possibility of successful interventions is reduced.

The inconsistent enforcement of laws in various regions in Indonesia exacerbates gaps in the protection of children and women, thus further perpetuating this practice. Although some areas may implement strict law enforcement, discouraging perpetrators of violence and providing assistance

²¹² Rangita De Silva De Alwis, 'Child Marriage and the Law: Legislative Reform Initiative PaperSeries' (2008) UNICEF.

²¹³ Ibid.

²¹⁴ Lisa Cameron, Diana Contreras Suarez and Susan Wieczkiewicz, 'Child Marriage: Using the Indonesian Family Life Survey to Examine the Lives of Women and Men Who Married at an Early Age' (2023) 21 *Review of Economics of the Household* 725–756, <<https://doi.org/10.1007/s11150-022-09548-2>> accessed 25 February 2024.

²¹⁵ Ibid.

to victims, there are also other areas where law enforcement is very minimal, allowing child marriages to continue to occur without supervision.

Cultural norms and community acceptance are essential factors in determining policing procedures.²¹⁶ In areas where child marriage is culturally accepted or even encouraged, law enforcement officials may face resistance or reluctance to intervene. Social pressures, family expectations, and community attitudes toward gender roles can all impact law enforcement goals.²¹⁷

In addition, differences in priorities among local authorities contribute to inconsistencies in law enforcement. In regions where child marriage is not considered a critical issue, resources and efforts may be diverted elsewhere, leaving the child marriage situation unresolved. This could cause authorities to widen gaps in protection.

Effective enforcement of laws related to child marriage requires coordination among various stakeholders, including government agencies, law enforcement bodies, civil society organisations, and community leaders. However, coordination challenges, such as a lack of communication channels, information-sharing methods, or collaborative frameworks, may impede efforts to address child marriage comprehensively.

First and foremost, domestic rules and regulations do not always reflect consistent commitments in international agreements. There may be inconsistencies or deficiencies in the legal framework that limit the effectiveness of measures to prevent child marriage and protect children's rights. Additionally, even though there are laws prohibiting child marriage, enforcement mechanisms may be ineffective or inadequately resourced. This has the potential to reduce the effectiveness of legislative measures aimed at preventing and addressing child marriage, as well as providing support to victims. Lastly, deep-rooted cultural traditions and social norms may contribute to the acceptance of child marriage in some communities, making the practice cannot be eliminated through legal frameworks. Therefore, efforts to address child marriage must include comprehensive solutions to address the main causes and cultural aspects that contribute to the prevalence of child marriage.

4.3.2 Regional Regulations and Customary Practices

In response to the pressing issue of child marriage, several provinces and districts in Indonesia have taken proactive steps by implementing regional regulations that complement existing national laws. Implementing regional regulations is a local approach to addressing the complex problem of child marriage. Provinces and districts are committed to protecting vulnerable children and improving their welfare by adapting legislation to their regions' specific needs and challenges.

²¹⁶ Sherly Lianto Lau, 'Phenomenon of Early Marriage on Girls in The Cintapuri Village in Banjarmasin City (Phenomenological Study)' (2023) 8(12) *KnE Social Sciences*, 456–470 <<https://doi.org/10.18502/kss.v8i12.13694>> accessed by 21 April 2024.

²¹⁷ *Ibid.*

However, the effectiveness of these laws can vary widely due to differences in law enforcement capacity and cultural factors. Inconsistencies in law enforcement systems and resources between regions can reduce their effectiveness. In addition, deep-rooted customary norms are prevalent, which sometimes condone or even support children.²¹⁸ Therefore, examining regional regulations must consider the substance of statutory regulations and practical implementation. It is essential to assess the effectiveness of enforcement of these regulations and whether they successfully address child marriage in each region. An essential part of the examination investigates potential contradictions between local regulations and established cultural norms. Legislative measures are important but must be aligned with the socio-cultural context to achieve acceptance and compliance.²¹⁹ This requires collaboration with communities, religious leaders, and other stakeholders to encourage dialogue and increase understanding.

Finally, the effectiveness of regional regulations in combating child marriage depends on their ability to deal with complex socio-cultural situations. Aligning regional regulations with national legislation while also considering cultural norms is critical in developing a framework for child protection. Holistic strategies must produce long-term change, including legislative reform, community participation, and awareness-raising campaigns.

4.3.3 Socio-Cultural Barrier

The existence of deep-rooted socio-cultural norms presents significant obstacles in achieving harmony between Indonesian law and IHRL, especially regarding child marriage. Cultural attitudes that legitimise early marriage still exist in certain regions, posing substantial challenges to the protection of children's rights. In many communities, child marriage is considered a cultural custom and not a violation of human rights.²²⁰ Cultural beliefs often prioritise family honour, economic reasons, and gender roles over the rights and welfare of children, thus perpetuating the practice of early marriage.²²¹

In addition, ingrained patriarchal traditions cause gender inequality and the subordination of girls, making them vulnerable to early marriage.²²² These standards require girls to prioritise their primary roles as brides and mothers, often at the expense of their education, autonomy, and future possibilities.

In addition, the lack of information and education regarding the negative impacts of child marriage contributes to society's widespread acceptance of

²¹⁸ Hoko Horii, 'Uncovering Difficulties in the Implementation of International Human Rights Laws in the Indonesian Pluralistic Legal System: Issue of Child Marriage in West Java' (2015) Nagoya University.

²¹⁹ Ibid.

²²⁰ Sherly Lianto Lau, 'Phenomenon of Early Marriage on Girls in The Cintapuri Village in Banjarmasin City (Phenomenological Study)' (2023) 8(12) KnE Social Sciences, 456–470 <<https://doi.org/10.18502/kss.v8i12.13694>> accessed 21 April 2024.

²²¹ Ibid.

²²² Yvette Efevbera & Jacqueline Bhabha, 'Defining and Deconstructing Girl Child Marriage and Applications to Global Public Health' (2020) BMC Public Health, 20, 1547 <<https://doi.org/10.1186/s12889-020-09545-0>> accessed 20 March 2024.

child marriage.²²³ Many people, including parents, community leaders, and government officials do not fully understand the devastating impact this practice can have on a child's health, education, and overall well-being.

Socioeconomic factors, such as poverty, lack of access to education, and limited economic opportunities, also contribute to the prevalence of child marriage.²²⁴ Families experiencing financial difficulties see early marriage as a way to ease economic burdens or forge alliances with wealthier families.²²⁵ Efforts to challenge and reform cultural norms face resistance from members of society who view such interventions as a threat to their cultural identity or traditional values. Overcoming this resistance requires a culturally sensitive approach that engages communities and encourages alternative practices.

In conclusion, the problem of implementing child marriage in the Indonesian legal system is diverse and deeply rooted in cultural norms and resource gaps. Weak enforcement mechanisms, exacerbated by unequal distribution of resources, hinder the effective implementation of laws to prevent child marriage. Additionally, although regional regulations are noteworthy for their efforts to complement national laws, they face challenges in consistency of law enforcement and cultural harmony. Overcoming these challenges requires a comprehensive strategy that strengthens the legal framework and law enforcement mechanisms and engages communities to challenge entrenched socio-cultural norms. Moreover, socio-cultural barriers, including deeply rooted patriarchal customs, increasingly complicate efforts to harmonise Indonesian law with IHRL.

4.4 Summary and Answer to Research Question Two

In evaluating alignment with IHRL, The Indonesian legal framework demonstrates partial alignment with IHRL in addressing child marriage within the Indonesian context. Indonesian law aligns with international standards by setting a minimum marriage age at 19 for both genders, recognising the risks of early marriage to children's health and well-being, as outlined in international treaties such as CRC, CEDAW, ICESCR, and ICCPR. This demonstrates Indonesia's commitment to protecting children from harmful practices and promoting gender equality within the institution of marriage. However, the presence of exceptions to the minimum age requirement and reliance on parental consent undermines efforts to comply with IHRL fully. These exceptions can lead to the exploitation of vulnerable individuals, particularly girls, and perpetuate the practice of child marriage. Therefore, while progress has been made, there is a need for stricter enforcement and alignment of Indonesian laws with IHRL to adequately address the challenge of child marriage and ensure the rights and well-being of all children in Indonesia.

²²³ Murphy-Graham, Erin, and Graciela Leal, "Child Marriage, Agency, and Schooling in Rural Honduras" (2015) 59(1) *Comparative Education Review*, 24-49.

²²⁴ *Ibid.*

²²⁵ Nawal M Nour, 'Child Marriage: A Silent Health and Human Rights Issue' (2009) 2(1) *Rev Obstet Gynecol*, 51-56.

5 Policy Recommendations

This important chapter moves from analysis to action, focusing on policy recommendations for ending child marriage. These recommendations are based on the previous analysis and aim to address various aspects of child marriage in Indonesia, reflecting the commitment to upholding international human rights law while addressing the socio-economic factors that keep this dangerous practice alive.

5.1 Legislative Reforms to Align Indonesian Laws with International Human Rights Law

5.1.1 Abolish Exceptions to the Minimum Age Requirement

Indonesia's legal framework should prioritise abolishing provisions that allow the minimum marriage age to be with parental consent. By resolving these exceptions, Indonesia can demonstrate its commitment to complying with IHRL and protecting the rights and welfare of children. Abolishing parental consent would set a clear minimum age for marriage, ensuring that children are protected from early and forced marriage without regard to parental consent. Additionally, actions like these will send a strong message that child marriage is strictly prohibited by law and will not be tolerated under any circumstances. This not only provides a deterrent effect for those who wish to take advantage of legal weaknesses but also provides more excellent legal protection for vulnerable children who are at risk of early marriage. By setting a strict minimum age for marriage without conditions, Indonesia can send a strong message about its commitment to upholding children's rights and promoting gender equality. This approach aligns with the principles articulated in the CRC and other human rights instruments, which emphasise the importance of safeguarding the welfare of children and encouraging their full and equal participation in society.

5.1.2 Strengthen Enforcement Mechanisms

Strengthening law enforcement mechanisms is critical to protecting vulnerable children and preventing individuals from engaging in these harmful practices. Establishing clear protocols for reporting and investigating cases of child marriage is essential to ensure that such violations are detected and addressed as quickly as possible. This includes creating accessible channels for individuals, community members and authorities to report suspected cases of child marriage.

Strengthening law enforcement measures can provide a deterrent effect that discourages others from engaging in child marriage. This is important to prevent exploitation, disclosure and the long-term impact of early marriage on children. Strong law enforcement mechanisms can also help protect children's rights and ensure they grow up in a safe and supportive environment that promotes their physical, emotional, and intellectual development.

5.1.3 Provide Support for Victims

Another essential strategy is to ensure that children at risk of or affected by child marriage receive comprehensive support services, such as shelter development and health services, psychosocial support, and legal aid. The creation of shelters and health services for victims of child marriage can provide safe refuge for people fleeing dangerous situations. Hotlines staffed by training professionals can provide instant support and connect victims with necessary resources. Community-based programs can provide ongoing support and assistance tailored to each individual's needs.

Furthermore, providing health services can also overcome physical and mental health problems caused by child marriage. This includes access to counselling services, medical care for any injury or illness, and reproductive health services, including initiatives to raise awareness of reproductive rights, family planning, and the importance of ensuring pregnancy to ensure the health and well-being of girls. Legal assistance is also crucial for survivors of child marriage to ensure their rights are protected and perpetrators are held accountable for their actions. By providing legal assistance, victims can find justice.

5.2 Socio-Economic Empowerment Initiatives

5.2.1 Comprehensive Education and Awareness Program

To address the root causes of child marriage and promote gender equality, Indonesia must implement a comprehensive education program for children, especially one that prioritises girls' education and provides opportunities for marginalised groups. This includes initiatives to increase access to high-quality education and overcome barriers such as distance, cost and cultural norms that prevent girls from attending school.

Indonesia must invest in infrastructure development and teacher training to improve the quality of education in rural and underdeveloped areas where child marriage is more common. This involves building schools and ensuring that schools have adequate resources and qualified teachers. Additionally, efforts should be made to identify and address barriers that prevent girls from attending school, such as costs and cultural norms that prioritise boys' education over girls'. This can include providing scholarships, promoting the value of education for girls, and highlighting the benefits of education that can help change society's attitudes and perceptions.

In addition, special attention must be given to marginalised communities, including indigenous groups, ethnic minorities, and rural populations, to ensure that all girls have equal access to education. This could include interventions such as community learning centres and vocational training programs for girls who experience significant educational challenges.

5.2.2 Skills Training and Vocational Programs

To address the main causes of child marriage, the Indonesian government must emphasise developing skills training and vocational programs. These efforts are intended to equip young people, including girls and boys, with practical skills and information to improve their economic opportunities and reduce their vulnerability to early marriage.

Child marriage is common in poor communities, and economic opportunities are lacking, perpetuating a cycle of hardship and vulnerability. By investing in skills training and vocational programs, governments can directly address the economic factors that encourage families to marry off their children too early. These programs aim to equip youth with the tools they need to find work, start a business, and become financially independent, thereby reducing their dependence on early marriage for economic survival.

Additionally, skills training and vocational programs offer a pathway to empowering young people, especially girls, who are impacted by child marriage. By giving girls access to education and vocational training, governments can challenge gender stereotypes and empower them to take charge of their lives. Education and skills development enable girls to participate actively in economic and social life, increasing their autonomy and decision-making capacity and reducing the risk of early marriage.

5.3 Community Engagement

5.3.1 Engage with Religious and Community Leaders

Engaging with religious and community leaders is critical in the fight against child marriage. Collaborating with local leaders, especially those from religious organisations, can raise awareness about the harms of child marriage and advocate for its prevention effectively.²²⁶ Mosques, churches, community centres, and schools can serve as vital platforms for dialogue and education about children's rights and gender equality.

To establish effective relationships with religious and community leaders, it is vital to approach them with sensitivity and respect for their cultural beliefs and practices. Building partnerships based on mutual trust and understanding can lead to meaningful discussions about the impact of child marriage on the lives of children and communities.

One strategy is to work with religious leaders to integrate messages about the importance of preventing child marriage into sermons, religious teachings, and community events. By highlighting the ethical and moral dimensions of child marriage, religious leaders can encourage their congregations to take action against child marriage.

²²⁶ Kasjim Salenda, 'Abuse of Islamic Law and Child Marriage in South-Sulawesi Indonesia' (2016) 54(1) *Al-Jāmi'ah J Islam Stud* 95-122 <<https://doi.org/10.14421/ajis.2016.541.95-122>> accessed 1 April 2024.

Community centres and schools can also play an essential role in raising awareness about child marriage. Organising workshops, seminars, and awareness campaigns can help educate the public about children's rights, gender equality, and the dangers of early marriage.

5.3.2 Youth Empowerment Programs

Implementing youth empowerment programs is a proactive approach to combating child marriage and promoting gender equality. By empowering teenagers to become agents of change, they can harness their energy, creativity and enthusiasm to create significant progress.

A critical aspect of the program is providing the training and resources necessary for young people to lead peer education sessions. Teenagers are often more sociable and influential when talking to their peers, making them good messengers in spreading awareness about the negative impacts of child marriage. These peer education sessions can address issues such as children's rights, reproductive health, consent, and the negative consequences of early marriage.

In addition to peer education, youth-led initiatives can include awareness campaigns to challenge social norms and attitudes that encourage child marriage. Young people can engage their communities in conversations about the need to keep children in school, delay marriage, and empower girls and boys using creative media such as art, theatre, music, and social media. Allowing young people to participate in community programs that focus on preventing child marriage can foster a sense of ownership and responsibility among youth. This is growing a new generation of leaders committed to building a more inclusive society.²²⁷

5.3.3 Multi-Stakeholder Collaborations

Facilitating multi-stakeholder collaboration is critical to building and implementing successful initiatives to prevent child marriage. Bringing together government agencies, civil society organisations, religious institutions, and community groups can leverage diverse perspectives, resources, and networks to address these complex issues comprehensively.

Government agencies play an essential role in providing the policy framework, funding and support for child marriage prevention programs. Through partnerships with civil society organisations, religious institutions, and community groups, government agencies can ensure that interventions are based on local context and responsive to the needs of affected communities.

²²⁷ Lisa Cameron, Diana Contreras Suarez and Susan Wieczkiewicz, 'Consequences of Child Marriage in Indonesia' (2020) <https://melbourneinstitute.unimelb.edu.au/data/assets/pdf_file/0004/3491923/MAMPU-Child-Marriage-in-Indonesia.pdf> accessed by 25 March 2024.

Civil society organisations often have experience working with vulnerable groups and can provide valuable insights into the root causes of child marriage and effective prevention strategies. Governments collaborating with these institutions can benefit from their grassroots connections, programming experience, and advocacy efforts.

Religious institutions as influential community leaders can have an impact on societal norms and attitudes towards child marriage. Involving religious figures and institutions in multi-stakeholder collaboration can promote messages of gender equality, children's rights, and the importance of postponing marriage until adulthood. Community groups, including youth organisations, women's groups, and local NGOs, are essential partners in implementing interventions at the grassroots level. Involving community members in program design and implementation can ensure that interventions are culturally acceptable, sustainable, and impactful. This emphasises society's commitment to safeguarding human rights principles and combating practices undermining individual autonomy and well-being. Coordinating efforts across sectors and stakeholders can create synergies, avoid duplication, and expand effective initiatives.

5.4 Summary and Answer to Research Question Three

The policy recommendations outlined in this chapter represent a comprehensive strategy to address the deep-rooted problem of child marriage in Indonesia. This can be achieved through legislative reforms to align laws with IHRL, socio-economic empowerment initiatives, and community engagement efforts. Advocating for changes to legal regulations, such as removing exceptions to the minimum age requirement for marriage and strengthening legal enforcement mechanisms, can build a legal foundation that firmly condemns and prohibits child marriage. At the same time, the program focuses on socio-economic empowerment initiatives, including education and skills training programs. It seeks to address the root causes of child marriage by providing individuals with the knowledge, resources and opportunities to make informed choices regarding their future.

In addition, the commitment to community engagement and multi-stakeholder collaboration underscores the importance of collective action in realising sustainable change. Involving religious and community leaders in dialogue and action and empowering young people to advocate for their rights can eliminate the practice of child marriage and promote gender equality at the grassroots level. Overall, these policy recommendations serve as a collective call to action, urging policymakers, civil society organisations, and community members to work together to achieve a future where every child has the opportunity to thrive free from child marriage.

6 Conclusion

Child marriage is still a significant issue in Indonesia because it perpetuates the cycle of inequality and human rights violations. This thesis has conducted a comprehensive study of the legal and human rights dimensions of the fight against child marriage in Indonesia, with particular emphasis on aligning the Indonesian legal framework with IHRL. By answering the research questions, this study highlights the complexities and challenges that exist in addressing the problem of child marriage.

This study highlights the complex nature of child marriage, which is influenced by sociocultural factors such as poverty, lack of education and information, and harmful traditional practices. The significant negative impact on the well-being of individuals, particularly women and girls, is enormous, affecting physical, emotional, and psychological health, access to education, and opportunities for personal and professional growth.

Furthermore, this study clarifies the obligations of IHRL to states to prohibit child marriage. The analysis of fundamental human rights instruments such as the UDHR, CRC, CEDAW, ICESCR, and ICCPR reveals that they require states to take proactive steps to prevent child marriage and protect children's rights. Under the UDHR, states must ensure that marriage is based on both parties' free and full consent, emphasising mutual consent and respect. The CRC requires states to abolish traditional practices that endanger children's health and refrain from recognising or approving marriages involving individuals under the age. At the same time, under CEDAW, states are required to set a minimum age for marriage, preferably 18 years for both sexes and enforce mandatory registration of marriages. Furthermore, through the ICESCR, states must protect children's rights to education and health, taking into account their best interests, by addressing the detrimental impact of child marriage on these rights. In addition, the ICCPR requires countries to promote gender equality and combat discrimination against women by condemning child marriage as a form of gender-based discrimination.

In terms of legislative measures, Indonesia has passed laws to combat child marriage, such as the Marriage Law and the Child Protection Law. The Marriage Law sets a minimum age for marriage for men and women. The Child Protection Law even has provisions that regulate parents' obligations to prevent early marriage.

In examining the alignment of the Indonesian legal framework with IHRL in addressing child marriage, the Indonesian legal framework aligns with international human rights principles to a certain degree. Despite efforts to address this problem through legislative changes and policy interventions, the Indonesian legal system still has gaps, especially in compliance with IHRL. Although Indonesia has ratified several international human rights treaties, including the CRC, CEDAW, ICESCR, and ICCPR, Indonesian law often falls short of international norms as it provides exceptions to child marriage in certain circumstances and parental consent. These loopholes fail to provide comprehensive measures to prevent child marriage.

In addition, weak law enforcement mechanisms, regional regulations, customary practices, and socio-cultural barriers make the implementation of current laws difficult. Despite legal prohibitions, child marriage still occurs, indicating a disconnect between legal provisions and effective law enforcement mechanisms. Indonesia's legislative system requires deeper harmonisation with IHRL to address child marriage effectively. This requires comprehensive legislative reform to close gaps and strengthen protection mechanisms.

In light of these findings, this thesis proposes a comprehensive approach to addressing child marriage in Indonesia, including legislative reform, socio-economic empowerment initiatives, and community engagement strategies. Legislative reform should prioritise the harmonisation of domestic laws with IHRL, particularly regarding the minimum age for marriage and parental consent. Socio-economic empowerment initiatives are critical to addressing the root causes of child marriage, including economic insecurity and lack of education. Community engagement strategies should focus on changing cultural norms, increasing awareness, and increasing stakeholder collaboration to build conditions that support the prevention of child marriage.

In final words, this thesis serves as a call for policy makers, civil society organisations and community leaders to prioritise preventing and eradicating child marriage in Indonesia. To effectively preventing and eradicating child marriage requires coordinated efforts at the national, regional, and community levels. By aligning the legal framework with IHRL, implementing socio-economic empowerment initiatives, and engaging the community, Indonesia can take significant steps in protecting the rights and welfare of children and ensuring a future free from child marriage.

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