Child marriage as a choice: rethinking agency in international human rights

Horii, H.

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Author: Horii, H.
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6 | Walking a thin line: Taking children's decision to marry seriously

6.1 Introduction

For me, 15 years old is good enough to marry, because girls do not go to school, and I was bored of being a child (bosan menjadi anak-anak). […] I am more free when I am married – I do not have to work and raise money so I can be lazy at home.[1]

This is what Ayu, who lives in a poor Denpasar community told during one of our several interviews. When I first met Ayu, she was 14 years old, married, and holding her two-week-old newborn daughter. Her marriage to a boy from the same community had occurred only recently, despite her mother's disagreement. She went through a *kawin lari* (runaway marriage). She ran away from home with her boyfriend and stayed in his family's place outside of Denpasar for a few months. When the couple returned to Ayu's parents, they were already married under customary law. Engaged in household chores, holding her baby in her arms, she looked like a young mother in her late teens. Yet when she was explaining that she was happy she had had a baby and that she wanted another child, her shy and innocent smile reminded me that she was still only 14.

Readers will probably respond differently to this story. People might feel moral condemnation for marrying at such a young age. Others might feel empathy for her poor living conditions. Some may regard it as the happy story of young lovers. If we take her word literally, she wanted to marry; it was her choice to do so at the age of 14. Though if we look at her situation through the international human rights framework, such a marriage is a human rights violation. On the other hand, scholars and policymakers recognize the growing demand for children's rights policies and frameworks to consider children's perspectives. If we consider this changing paradigm, there is an increasing need to take Ayu's decision seriously.

As this chapter will demonstrate, the child marriage framework still relies on a traditional protective approach. Most human rights advocates argue that child marriages are by definition 'forced marriages', even when the child appears to have given his or her consent (see, e.g., Equality Now 2014: 53; United Nations Children's Fund Innocenti Research Centre 2001; UN Committee on the Elimination of Discrimination against Women 1994: para

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1   Interview, May 2017.

36; Irdiana 2015). Campaigns against child marriage never suggest accommodating children's decisions to marry, even though Articles 5 and 12 of the CRC recognize children's evolving capacities and their right to be heard. These campaigns discuss girls' agency, but only their agency *not* to marry (see for instance United Nations Population Fund 2018; Reiss 2018; Child Helpline International n.d.).

Like Ayu, children decide to marry in many cases, especially those in their mid to late teens. The question is whether such a decision is really the child's decision, considering the surrounding social pressures, power dynamics, extended family, and local leaders. Even when it is the child's autonomous decision, to what extent should policymakers take their voices seriously? This chapter provides empirical evidence about children's agency and capacity in deciding to marry. It thus establishes that the current binary child marriage framework overlooks agency's complexity.

The next section will explain the changing paradigm in children's rights through the literature on the diversity of childhood and children's agency. I then examine the influence of the new paradigm on the CRC principles and provide a legal analysis of the extent to which the child marriage framework is in line with the principles. Later, I try to understand to what extent, and how, children exercise agency, based on my empirical findings. For my analysis, I rely on 16 cases of 'child marriage' among the Balinese Hindu populations across different social classes. These case studies involved interviewing girls, boys, and their parents and family members. In the analysis, I pay particular attention to two aspects:

1) Relational: The power dynamics among children, their parents, their extended family and local leaders.
2) Situational: The options the children had at the time of the decision-making.

The conclusion builds on the findings to discuss an alternative approach to the current binary framework of child marriage.

6.2   A PARADIGM SHIFT?

Since the 1990s, the sociology of childhood has discussed a paradigm shift, moving from the protective approach to one that regards children as active agents (James and Prout 1997; Leonard 2015). In his book, "The Invention of Childhood", Cunningham (2006: 45) argues that the modern outlook on children overlooks their capabilities and that the protective approach "downplays their abilities and resilience". When it comes to children's rights, the protective approach is reflected in what Tobin (2015) calls the "vulnerability approach", which leads to the objectification and silencing of children. He

thus calls for a broader conceptualization of children as being both vulnerable and resilient, to recognize their evolving capacities and right to participation in decision-making processes that involve them (Ibid). Tisdall (2017: 64) also problematizes vulnerability as a "controlling and stigmatizing label" that can be used to constrain people's rights to make decisions. One alternative to the vulnerability approach would be a "capabilities approach", which takes into account what children need from their perspectives (Domínguez-Serrano, del Moral-Espín, and Gálvez Muñoz 2019; Peleg 2013).

This shift away from the protective approach closely relates to the deconstruction of the dominant view on childhood. Over a decade, childhood scholarship has tried to incorporate the diversity of childhood at the theoretical level. James, Jenks, and Prout (1998: 9) have tried to "explain and deconstruct those very discourses that have established taken-for-granted 'truths' about childhood", fuelled by child developmental psychology from the early twentieth century (James and Prout 1997: 9-10). According to Liebel (2012: 206), the long-standing western concept of childhood has perished and "children's protagonism" is on the rise, with an increasing awareness of young people's capabilities and their influential role in society. The concept of protagonism is an alternative to "paternalists" and "developmentalists", who see the poor and ethnic minorities as underdeveloped people who are uncivilized and culturally backward (Ibid). Bunting (2005) criticizes the assumed uniformity of concepts such as childhood and marriage and calls for wider and more careful recognition of their diversity. Jenks (2004: 5-6) proposes discussing "the proliferation of childhood*s*", saying that "the idea of childhood as a universal category does not meet the real experiences of children across the globe".

These changing views have prompted children's rights and childhood scholarship to take an increasing interest in the voices of children. The "living rights" concept considers children's rights as a "'living practice' shaped by children's everyday concerns" (Hanson and Nieuwenhuys 2012: 8). Some scholars have designed research with children as co-researchers (Spyrou 2016; Warming 2016). Others use photographs to capture a sense of children's perspectives on their everyday environment (Mizen and Ofosu-Kusi 2012).

Despite the shift in childhood studies, a protectionist view continues to influence policies concerning children. A good example is child labour. Nieuwenhuys (1996: 237) demonstrates that children are denied their agency in the creation and negotiation of value by the modern idea of removing children from their economic activities. Saadi (2012: 160) has documented the continuous tension between the movements of working children and core international actors committed to the eradication of child labour. While international organizations present former child labourers whose life stories fit well into their human rights agenda, they tend to mute

the voice of the working children's group who advocate for their rights to work (Ibid: 158, 161). Van Daalen and Mabillard (2018) have documented the unequal power relation where global actors in Geneva ignore working children's voices. Boyden (1997: 205) points out the danger of such global power relations: West-centric measures that intend to resolve children's problems can be harmful in the South. As child labour studies show, documenting and verifying the effects of children's rights' policies in real-life contexts is one way to incorporate childhood diversity into policies that are based on a homogenous protectionist view of childhood (Reynolds, Nieuwenhuys, and Hanson 2006). This emphasizes anthropology's role in the study of children's rights (Hart 2006).

6.3   Child marriage framework within the CRC

6.3.1   Evolving capacity and rights to be heard

The Committee on the Rights of the Child (2007: para 5) encourages the above-mentioned paradigm shift, stating that "a shift away from traditional beliefs that regard early childhood mainly as a period for the socialization of the immature human being towards mature adult status is required". Article 5 of the CRC incorporates the concept of "evolving capacity": The more the child knows, experiences, and understands, the more direction and guidance should be transformed into advice, and finally should eventuate an exchange on equal footing (Committee on the Rights of the Child 2009: para 84). This concept seems to have been accorded an increasingly important role by the Committee on the Rights of the Child since the CRC's adoption in 1989 (Varadan 2019). Article 12 of the CRC stipulates the "right to be heard", requiring that State Parties ensure that children have the right to express their views freely and that due weight is given to those views in accordance with the age and maturity of the child.

Despite these principles, when it comes to child marriage, international institutions are still reluctant to recognize children's capacities and seem to fall back on the protective approach. A joint general recommendation by the CEDAW and CRC committees suggests "respecting the child's evolving capacities and autonomy in making decisions that affect her or his life" and allows "a marriage of a mature, capable child below 18 years of age". However, the committees stipulate that this type of marriage may only occur when the following two conditions are met:

1)   The child is at least 16 years old, and
2)   "Such decisions are made by a judge based on legitimate exceptional ground defined by law and on the evidence of maturity, without deference to culture and tradition" (Committee on the Elimination of Discrimination against Women & Committee on the Rights of the Child 2014).

The conditions are strict, and it is unrealistic to expect the majority of child marriage cases to meet them. For instance, in most child marriage cases in Indonesia, people have limited access and motivation to go to court (Grijns and Horii 2018; see also Chapter 3). Consequently, in practice, these conditions still make it difficult for children to exercise their marital agency in an internationally accepted manner. Thus, even this committee recommendation seems tokenistic rather than an actual effort to recognize children's capacities.

6.3.2　The best interest of the child

This joint recommendation, as stated above, indicates the committees' strong position against any 'deference to culture and tradition'. This inflexibility seems hard to reconcile with the CRC's 'best interest of the child' principle, which is supposed to accommodate socio-cultural considerations. The principle may vary depending on each context's socio-cultural conditions. For instance, in highly industrialized countries, the best interests of the child are served by policies that emphasize autonomy, but in more traditional societies, the links to family and the local community might be of paramount importance (Alston 1994: 5). The principle is stipulated as "a primary consideration" (A3 of the CRC), meaning that the child's interests have high priority and are not just one of several considerations (Committee on the Rights of the Child 2013).

The Committee on the Rights of the Child (Ibid: para 32) considers that Article 3 (the best interest of the child) and Article 12 (the right to be heard) have complementary roles, in that the latter provides the methodology for hearing the child's view on matters affecting them. The child's voice is one of the elements that can be used to determine the child's best interests. However, it must be weighed against other factors, such as the preservation of family relations, the child's identity, and the protection of the child (Ibid: para 52-84). The best-interests assessment requires balancing various elements, often walking a thin line between the child's protection and empowerment.

Compared to the CRC Committee's careful considerations, the child marriage framework is rather single-minded. The CRC Committee (2017) embraces the "child rights approach" where children participate in the decision-making process. However, the "welfare approach" involving the "rescue" of children seems to overrule it in the global child marriage framework, resulting in the current abolitionist approach towards the practice. The reason for this gap can be attributed to a normative standpoint: When children don't do "the right thing", the emphasis tends to be put on the protection of children, rather than looking at their capacities (Hanson 2016). In other words, children's views are only heard when adults consider them as "rational, consistent, and on their own" (Tisdall 2016: 374). When children work, marry, or get involved in violent political struggles, the children's

actions are considered 'wrong', and the concept of agency loses its significance (Ibid: 474).

This liberal paternalism partially derives from policymakers' or activists' specific assumptions. When children's behaviour does not fit the adult actors' conception of childhood, the adult tends to overlook the child's agency. As a result, the child marriage framework and international policies on children still rely on the protective approach and tend to view children, especially the ones in the Global South, as passive victims.

6.4   Children's agency and participation

The previous sections have shown that children's agency plays a significant role in recent discussions about children's rights. To understand how and to what degree children exercise their agency, children's rights scholarship has introduced 'children's participation' into the process of decision-making. Hart's (1992: 9) "Ladder of Participation" has served as a basic typology for thinking about children's participation. He classifies the first three steps of the ladder (i.e., 1. manipulation, 2. decoration, and 3. tokenism) as "non-participation" and the next five steps (i.e., 4. assigned but informed, 5. consulted and informed, 6. adult-initiated shared decisions with children, 7. child-initiated and directed, and 8. child-initiated shared decisions with adults) as "degrees of participation" (Ibid).

This model, however, is not a definitive tool. It is a "beginning typology" and should not be used as "a simple measuring stick" (Ibid: 7,11). Lundy (2007) proposes a "new model" by conceptualizing Article 12 of the CRC with four key elements: Space (children must be given the opportunity to express a view), Voice (children must be facilitated to express their views), Audience (the view must be listened to), and Influence (the view must be appropriately acted upon, as appropriate). Tisdall (2016: 374) critically evaluates Article 12, noting it involves adults' discretionary decisions regarding children's capacity and maturity.

While children's participation is theoretically supported, understanding of children's capacities is still limited (Collins 2017: 34). Both Hart's and Lundy's models are useful in examining participation or the 'output' of children's voices. However, understanding agency must include exploring the nature of voice. For instance, Komulainen (2007) points out that those who aim at 'listening to a child's voice' have to also consider social dynamics. Anthropological and sociological scholarship has long tried to understand what constitutes 'agency' and how the surrounding relationships, structures, and norms influence one's agency (e.g., Giddens; Mahmood; see also Section 1.2.5). According to these understandings of agency, it is an ability to choose by internally reconciling structure, i.e., patterned arrangements

that influence or limit available choices. Children's acts of marrying (following the structure) and their act of not marrying (resisting the structure) can then equally be an outcome of exercising agency.

When it comes to children's agency, their inevitable dependence on others is particularly important. Legally, socially, and materially, parents have power and influence over their children (Fineman 2017: 145), and this shall not be neglected when 'listening to children's voices'. But it is also possible to see parental influence from another perspective. If children want to act for their parents, given the particular significance of family relationships, it is difficult to consider their action as forced. Children in Thailand working as prostitutes are an extreme example. Their jobs allow them to support their parents and fulfil their duties, and accordingly, they view themselves as good children (Montgomery 2007: 419). Of course, one can argue that such behaviour is situated in a fundamentally oppressive societal structure, but this does not reduce that there is a degree of agency within the structure.

This signifies a relational aspect of their agency. Some working children, for instance, regard their economic activities as an important element in their social life (Saadi 2012: 152). This social connection creates the "relational self" shaped by obligations to traditional kin and community (Merry 2009: 404). The "right of the relational self" (Engel 2018) occasionally conflicts with the liberal understanding of an 'individual right'. The case of a Thai child prostitute also demonstrates the significance of relationality: "in Baan Nua, ensuring a child's rights to be free from sexual exploitation would mean violating their rights to live with their families and in their communities. Enforcing one right would mean infringing others that the children claim to value more" (Montgomery 2001: 94). According to Hanson (2016: 474), in the discourse about children's rights advocacy, the denial of children's right to marry, work, or participate politically ignores both children's relational selves and their agentic selves.

In evaluating children's capacity to exercise agency, the situational aspect of their capacity is important. Ansell (2009: 204) discusses children's limited "capacity to effect deliberate change" when they are in highly constrained contexts. Intense relationships with people and places, for instance, create difficulty for children to exercise agency. Hart (1992: 24) also distinguishes "children in especially difficult circumstances", describing children with no family, or who are affected by a disaster, poverty, or armed conflict as a group with a greater challenge to participation.

In sum, assessing children's participation is not enough to examine their agency in decision-making processes. In examining to what extent children are exercising agency, the relational aspect (power relationship, dependency) and the situational aspect (options, environment) are factors to be considered carefully. To discuss the boundary between "consent" and "coercion",

social, economic, gendered, and cultural constraints should be considered, and possibilities for the refusal of consent is a necessary condition for "real autonomy and meaningful consent" (Bunting et al. 2016). Children may be participating in the decision-making process and be meeting the participation model criteria. However, even then, they might not be exercising their agency in the strict sense if their 'voices' stem from the particular power relationships they are in or from highly constraining contexts. Only with this 'strict' understanding of agency that considers relational and situational aspects can we explore if we are taking their voices seriously, walking the thin line between empowerment and protection. The next section will explore this through case studies.

6.5   Findings & Discussions

This section presents an analysis of the process of children's (in particular mid- to late-teenagers') involvement in decision-making about their own marriage by using a 'strict' understanding of agency. Considering the situational and relational aspects of the decisions, each case demonstrates how and to what extent these teenagers exercise agency.

6.5.1   Case of Risky: exercising agency that inhabits norms

When Risky married his wife Widi, he was 18 and Widi was 16 or 17 years old. They had been in a courtship (*pacaran*) since junior high school, and after four years of *pacaran*, Widi became pregnant. Widi did not tell Risky about the pregnancy at first, but he eventually found out through her parents, who came to tell him to take 'responsibility'. He said he was 'a little scared' at that time, but his father told him that he would 'just have to accept it'.

Risky and Widi began having sex when Risky was in his first year of high school. They used a condom the first time, but afterwards, they continued without it; 'just trying' as Risky said. When I asked Risky if he was ready to marry Widi, he said yes. He was not only ready, but he *wanted* to marry her. I then asked if they were trying to become pregnant so they could marry, to which he answered, 'maybe not… but just trying'.

For him, the ideal age of marriage is 23. He thinks it is better to first graduate from university. When I asked him if he thought about not marrying Widi after finding out about the pregnancy, he said 'no, I have to marry (*harus nikah*)'. I further asked who said '*harus nikah*' and he said 'myself'. When I asked him if he has ever regretted that Widi became pregnant at that time, he said no. They want another baby next year.

It was Widi's parents who initiated the discussion about marriage, and Risky's father who pushed for it. It seems that the marriage decision

was imposed on him at that time as something that he would 'just have to accept'. However, it is also evident that he understood why he had to accept it, as he understood and agreed with the norm that one has to marry when one's girlfriend becomes pregnant. He also described that it was he ('myself') who considered it necessary to marry when his girlfriend became pregnant. This is internalization, i.e., *inhabitation of the norms*.[2] Therefore, although his parents initiated this marriage decision, it can also be considered Risky's act of agency.

6.5.2   Case of Agus and Mawar: parental involvement and different types of decisions

For the first interview with Agus and Mawar, I was invited to their house, where Agus' mother was present. I explained my research and clarified that I came to talk about the marriage of Agus and Mawar. On that day, Agus' mother dominated the conversation, even when I directed my questions to Agus and Mawar. She repeated several times during the interview that they married because of mutual love ("*sama cinta*" and "*suka-sama-suka*"). If children like somebody, marriage is "up to the children", she said. I felt that Agus' mother wanted to take control of their story. I also wanted to hear the story from Agus and Mawar, so for the second and the third interview, I met them outside of their house, without Agus' mother. They then expressed the motivations behind their marriage in more detail and somewhat more freely.

Mawar married at the age of 16. Since she was young, she has lived in Denpasar with her parents, who were vendors and were often away from home, working on other islands. After finishing junior high school (SMP), she started working at the age of 15 at a tailor store. She met Agus at the store, and they started dating. Mawar first wanted to hide this from her parents, as she was afraid that her father would get angry with her for dating at such a young age. However, when they went to see her father after one year of dating, he was just startled (*kaget*). And at the second meeting, he told them to get married. Agus jokingly said that they married because Mawar's family was afraid of a 'hit-and-run', that he was dating without commitment and would run away before marriage. If Mawar's father had not asked them to marry, they would not have considered marrying at that point. In fact, they never planned to have a baby or to marry, and just wanted to 'follow the flow'. For Agus, it did not matter whether they married sooner or later.

In Bali, parents are heavily involved in marital decisions, including decisions about the partner, the type of marriage ceremony, post-marital arrangements, and so on. Parents sometimes even decide whether their children should marry and when, especially when an extra-marital pregnancy

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2   See Section 1.2.5. In this dissertation, 'agency' is defined not only as acts that resist norms, but also the multiple ways in which one inhabits norms.

occurs. This type of decision-making sometimes also involves a *banjar* head (see Section 4.2.1). In Agus and Mawar's case, the trigger for their marriage was the pressure from Mawar's father, but it did not seem to have disrupted their lives or plans. Both Mawar and Agus were already working, and according to Agus, they would have still married sooner or later. Thus her father influenced the timing of their marriage, but not her choice of partner and other arrangements. This case shows *parental involvement in marriage decisions* and the *different types of decisions* in which agency was exercised. Although Agus and Mawar exercised little agency in deciding when to marry, they decided who to marry and about their life after marriage.

6.5.3   Case of Ayu: genuine agency of her own and limited life options

Let me now detail the case of Ayu, whom I introduced at the beginning of this chapter. Ayu lives in the poorest community in Denpasar (i.e., the *Pasar Community*, as explained in Section 5.2.3). This community has lived in Denpasar for two or three generations, with women and children working as carriers (*tukang suun*) at a traditional market or men working as parking guards or construction workers. They are all from a village from one of Bali's most remote and poorest areas, living in a small residential complex (*kost*). They seem to have little interaction with the rest of the world. They also only marry within their circle. Most of them have never had any schooling experience and are illiterate. For generations, it has been normal for girls in this community to marry before 18, and some people consider marrying early as evidence of attractiveness.

I visited Ayu in her community several times, and I would often find her peeling a bucket of garlic or onions while holding her baby girl in a sling. She would sell a bucket of peeled garlic for Rp. 40,000 (€2.5) and 10kg of peeled onions for Rp. 20,000 (€1.2). Ayu started working as a market carrier as soon as she could, earning around Rp. 50,000 (€3.1) per day. She has never been through formal education. She said that she did not like going to school because 'the teachers were very strange' and because she had a slight speech impediment; she could not pronounce the 'R' sound clearly (in Balinese, this is called the *badil*).

I talked with Ayu's mother, who herself married at the age of 16. She did not want Ayu to get married so early because to her 'she was still a baby, not a teenager'. She said:

> *When she marries, she is not my child anymore. She belongs to her husband. Now she will work for his family and not for me.*[3]

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3   Interview, May 2017.

This remark shows the expected duties and roles of children in the community. When girls marry in the Balinese kinship system, they 'marry out', so poor families are not content when their daughters marry at a young age. As explained, she had a run-away marriage, which did not involve her mother's opinion.

Despite the *limited life options* Ayu seems to have, she was surprisingly proactive, and her marriage decision displayed *genuine agency*: she set up the plans for marriage and only later informed the adults of the decision. Ayu seemed to be aware of the limited options available to her and chose what she felt was her best option. However, proactive decisions do not necessarily lead to expected outcomes. Her expectation of married life ('I do not have to work and can be lazy at home') was wrong, and she realized that she still has to work to earn a living in her new household. It is likely that in her situation, she was not fully aware of the consequences of her decision.

6.5.4   Case of Swasti: social pressure

Swasti, which I introduced in the previous chapter (Chapter 5), is also relevant for the analysis here. She lived in a rural village in East Bali and became pregnant when she was 15 years old, in her last year of junior high school. She and her boyfriend have lived in the same village, met in one of the neighbour's ceremonies (*upacara*), and have been in *pacaran* for over a year. When I asked her what she liked about him, she just said 'I was still young and unstable'. At the time of the interview, they had already divorced.

Swasti's boyfriend first denied that she was pregnant with his child and refused to marry her. However, after a week, he eventually agreed, since he was 'ashamed' *(malu)* because their relationship was known in their small village. Although her mother told her to have an abortion since they were so young, Swasti decided not to have one because she was 'scared'. Instead, she stopped going to school. After giving birth, while being married, she managed to return to education and finished *kejar paket* B (the junior high school equivalent).

Although she does not regret having a child, she regrets marrying her husband. Looking back, she said:

> *If I could return to the time when I became pregnant, I would choose to be a single mother.*[4]

However, at that time, it was not an option. People in the village did not accept single mothers. If she gave birth out of wedlock, she and her family would have been ostracized from the local community (*banjar*). She

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4   Interview, July 2017.

mentioned that her parents eventually let her marry because Swasti and her boyfriend loved each other (*suka-sama-suka)*. I asked her if she *wanted* to marry him at that time, to which she replied:

> *How can I say … (pause) I guess, yes.*[5]

Like Ayu, Swasti pushed her way through marriage because of 'mutual love'. She was highly involved in the marriage decision. However, this case also demonstrates the *social pressure* that strongly affected her decision. Especially in rural areas, community is so central to their lives that pregnant teenagers are left with no choice but to marry. The social structure Swasti lived with severely limited her capacity to exercise agency. Although retrospectively, she would rather have been a single mother, she also acknowledged that not marrying was not an option at that time.

Notably, this social pressure also exists in urban areas. My research assistants, educated and urban Balinese young adults, explained the difficulties with the norms:

> *A: People in Bali run around in circles of adat, and it is very difficult to break them.*
> *B: And if you are different, while everyone believes in all those adat ceremonies and rules, you can't do anything. You just have no choice but to follow the others in those rules. It's very difficult to be different.*
> *A: Exactly. If you don't do upacara, your identity will be questioned. People say to you, 'Are you Balinese?'*[6]

In Denpasar, Riska's case and her remarks also suggest the strong influence of social norms. She became pregnant while still in school and outside of marriage, and she eventually had a miscarriage:

> *After I had this miscarriage, everybody said 'it's going to be okay'. Everybody took care of me, but I wanted them to leave me alone. They looked at me as if I was sick. They said 'it's going to be okay', but I knew that it was not okay for them. I blamed myself for not being a perfect daughter. My mother always told me what she wanted me to do. To meet her expectation, I studied hard to be at the top. But I failed when I got pregnant before marriage.*[7]

These stories of expectations are not unique to Indonesia. Social pressure is omnipresent and influences our behaviour everywhere: in rural and urban areas, in the 'Global South' and 'Global North'. The reference network framework, which I explained and used in Chapter 5, indicates the inevitable correlation between social norms and individual behaviour and decision-making.

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5   Interview, July 2017.
6   Personal Communication, August 2017.
7   Personal Communication, May 2017.

6.5.5   Overall Analysis

I chose these four cases because they are especially rich in information, and therefore valuable for a qualitative analysis of the 'strict' understanding of agency. These four cases represent all 16 cases in the children's' degrees of participation. The overall analysis of the 16 cases shows that none of those who married young expressed themselves as having been forced to marry. In Hart's Ladder diagram, the 16 cases are also mostly categorized as high-level participation. Half of the cases are in Step 8 (Child-initiated, shared decisions with adults), while the other half ranges from Step 4 (Assigned but informed) to Step 7 (Child-initiated and directed).

However, as I have argued earlier, assessing children's participation is not enough to examine their agency in decision-making processes. Are those decisions an outcome of children's acts of agency, even under the 'strict' understanding of agency? Power imbalances are also evident in child-parent relationships, which influence children's voices. According to UNICEF Indonesia, "child marriage is an outcome of prevailing social norms" (Irdiana 2015). The case studies have proved that strong social pressure does exist, especially in the context of pre-marital pregnancy. For example, Swasti's choice to marry seems to have been out of necessity. In fact, 90% of the studied cases of child marriage were caused by unplanned pregnancies, to which child marriage is a 'solution' (see Chapter 5). In other words, a lack of access to reproductive health tools and the existing social structures severely limit the pregnant teen's possibilities. Various social networks build the structure: the parents and peers (see Chapter 5), their extended family members, and the larger community in which they live.

However, considering all child marriage as an outcome of prevailing social norms denies the possibility of exercising relational autonomy. Swasti's case presents a kind of 'submission' since she chose marriage because she did not see any other options. By contrast, Risky's case shows the possibility of exercising agency in a way that inhabits norms. Agency is not only about resisting social norms (i.e., the norm that 'one has to marry in cases of pregnancy') but also about following them. Ayu's case also illustrates the possibility of exercising agency in a situation with limited possibilities. She lives in a 'difficult situation', in poverty and without education. This economic condition is relevant when examining whether she really exercised her agency. Was refusing marriage a possibility for her? While advocates against child marriage describe poverty as a factor driving children into marriage (see, e.g., Vogelstein 2013), Ayu was very proactive in her decision to marry. While a 'difficult situation' requires special attention, it does not mean that people cannot exercise agency in such situations. In fact, Ayu was aware of her life choices and exercised her agency within the limited possibilities that she had. She was, in Maithreyi's (2019) words, a "strategically

opportunising actor" who sought to make her life more meaningful despite the structural constraints placed on her.

The next question is 'to what extent should policymakers take children's voices seriously?' To what extent should policymakers decide what is and is not good for children? For instance, although Ayu did exercise her agency to marry, it became clear that she was either unaware of the consequences of such a decision or had wrong assumptions about it. Does it mean that she was 'too young' or 'not mature enough' to make decisions? Theoretically, children's views must be given due weight when they are capable of forming them (Article 12 of the CRC), namely when they have "sufficient understanding to be capable of appropriately forming his or her views on the matter" (Committee on the Rights of the Child 2009). However as Lundy et al. (2019: 403-6) have indicated, 'appropriately' risks adults imposing subjective assessments on the *quality* of the children's views and "the best interests principle cannot be automatically invoked by an adult to trump the views of a child".

It is tempting to intervene in children's seemingly 'wrong' decisions. However, there is a need to step back and reconsider our assumptions. In doing so, the key question should not be whether the decision is wrong. Instead, it should be whether policymakers should attempt to withdraw the decision from the child (e.g., by imposing a general ban on child marriage), keeping in mind the problems children are experiencing. These problems may differ greatly depending on the society in which the children live. As explained in Section 6.2, childhood varies in its forms and meanings, in each society and time. This diversity of childhood*s* (Jenks 2004: 5-6; see Section 1.1.2) makes it extremely difficult, if not impossible, to make a moral standard universally applicable.

Chapter 2 has demonstrated that child marriage is currently described as 'a harmful tradition' (The Fourth World Conference on Women 1995; United Nations Children's Fund 2005). However, this framing is problematic as "the notion that non-Western people are governed by culture suggests they have a limited capacity for agency, will, or rational thought" (Volpp 2000: 96). Hopgood (2016), with an example of female genital mutilation (FGM) of girls, describes such intervention as "international paternalism". In the case of FGM (as well as child marriage), parental paternalism (parental authority to decide what is right and wrong for their children) competes with international paternalism (international human rights activism). Children are almost absent from the discourse (Ibid). The international paternalism "overrules" parental paternalism, presuming that cutting one's daughter is wrong (Ibid: 257). Hopgood (Ibid: 290) also raises an important point about responsibilities: while the international anti-FGM movement's gaze moves on and activists eventually get back on the plane, parents remain responsible for the long-term life prospects of their daughters. While child marriage

and FGM are two considerably different issues, the types of paternalism and the responsibilities of interventions are also relevant for the discussions on agency in the child marriage framework.

The discussions about agency in 'harmful traditional practices' are highly racialized. Human rights activists tend to assume that girls in the Global South need liberation through induction into the metropolitan West's progressive social norms. Consequently, they describe 'other' girls as 'always or already victims', to be rescued from cultural norms. It is a legal fiction that children are incapable of making decisions. They are capable of both self-agency and active collaboration with adults (Tobin 2015: 178). However, taking a child who wants to marry seriously requires liberating ourselves from such discriminative notions.

Taking children's voices seriously should occur alongside saturating their world with accurate and realistic information and creating an enabling environment. That 90% of the child marriage cases in Bali arise from unplanned teenage pregnancies indicates the urgency and necessity of providing reproductive health information. Another important task is correctly informing children about the possible consequences of marriage. This knowledge, alongside better access to reproductive health tools, a way out of poverty, and equal access to basic education, can prevent adolescents from unwillingly limiting their own choices and opportunities. Children are also resilient. The case studies demonstrate that they can craft their life after marriage in the most desirable way, given the possibilities. For example, Swasti found a way to continue her education after marriage. By focusing on stimulating their resilience, policies should be designed to help already-married children continue their education and build the life they wish to lead. For the child marriage framework to be truly emancipatory, it needs to provide increasing and differentiated options instead of a general ban.

6.6   Conclusion

This chapter demonstrated that despite the changing paradigm in the children's rights discussions and policies, the child marriage framework still relies on a traditional protective approach. It first established that the child marriage framework is inconsistent with the CRC in two ways:

1)   It fails to consider children's evolving capacity and the right to be heard.
2)   It fails to ensure that a margin of appreciation is incorporated into the 'best interests of the child' principle.

By not considering these two principles, the rigid child marriage framework limits itself in its capacity to meet the CRC's goal.

The practice of 'listening to children's voices' is more challenging than the theories may suggest. Both academics and practitioners in the children's rights field have tried to apply the theories by assessing and enhancing children's participation in the decision-making process. However, the known participation models are not sufficient to fully explore children's 'voices' or to examine their agency in the decision-making process. In examining the extent to which children are exercising agency, both relational and situational aspects should be carefully considered.

The case studies from Bali were analysed based on the 'strict' understanding of agency and enable us to explore whether or not we should take their voices seriously. None of those who married young expressed themselves as having been forced to marry, nor did they describe their marriage as a child marriage or an arranged marriage. Although the social pressure and parental influence were evident, some children were able to reason their marriage decisions based on the norms that they inhabit. Some demonstrated their agency within the limited possibilities they had. When listening to children's perspectives, it becomes clear that they decide to marry out of love, to belong to the community, and for new opportunities.

Based on these points, I maintain that the current measures against child marriage fail to walk the thin line between children's empowerment and protection. Setting the marriageable age at 18 essentially bans child marriages, which takes this decision away from teenagers who have proved themselves autonomous enough to act with agency. The shift from protection towards empowerment requires a more holistic and inclusive approach (see Chapter 2), since taking any married children's voice seriously requires our own liberation from a fixated image of children being passive victims, especially in the Global South.

The danger of an incomplete or inaccurate framework is that it deviates reform efforts away from problems experienced by local communities. As demonstrated in Chapter 5, the problem that Balinese adolescents face is not marriage itself, but unplanned teenage pregnancy. A lack of knowledge about adolescent reproductive health limits their choices and opportunities, so actors should invest in an enabling environment, including better access to reproductive health tools, poverty reduction, and equal access to a basic education system. For the international child marriage framework to focus on empowerment rather than bans, policy priorities should be designed to encourage children's participation in and collaboration with adults in decision-making, where they are informed of the consequences of marriage and their love relationships. Government policies and CSO programmes could also be improved to stimulate children's resilience, improve their life after marriage (e.g., supporting married children in continuing their education), and enable them to live the life they wish to lead.