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

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Summary

Over the past decade, child marriage has become an increasingly important topic in the international human rights and development agenda. Unified under the slogan “End Child Marriage”, non-governmental, governmental and transnational organizations have intensified their efforts and investments into this issue. There is currently an increasing amount of investment, human resources, time, and passions spent on ending child marriage. Thus, it is a crucial time to reinvestigate and reconstruct the current approach to child marriage, to ensure that it is effective. To do so, this dissertation offers empirical evidence and multi-layered analysis of child marriage at different levels of society, based on findings from my fieldwork in Indonesia.

At the heart of this dissertation, there is a puzzle it tries to solve: while international human rights institutions celebrate when girls exercise their agency *not to marry*, they do not recognize their agency *to marry*. This contradictory view on agency is embedded in the international child marriage framework – the basic structure upon which international organizations deal with child marriage practice, including its definitions, discourses, and the legal rules. The title of this dissertation, “Child Marriage as a Choice”, therefore, is in a sense contradictory, since the international human rights institutions that constructed the term do not recognize the possibility of children choosing to marry.

However, ‘child marriage’, defined as “any formal marriage or informal union where one or both of the parties are under 18 years of age”, has always occurred independently from how international institutions frame it. While the campaigns against child marriage tend to present child marriage as a forced marriage between an early-teenage girl and a much older man, the reality of child marriage is much more diverse. For instance, my research in Indonesia shows that many cases of so-called ‘child marriage’ are in fact love-marriages between adolescents aged around 17. Furthermore, the international human rights framework identifies child marriage as *always forced*, assuming that children are not capable of consenting to marriages. This categorical approach is problematic, as it risks ignoring the possibility of agency exercised by a ‘child’, especially in so-called ‘traditional’ settings.

To explore these contradictory views, this dissertation examines two central questions: (1) *why do children marry*, and (2) *how does this practice both inform and is treated within the multiple competing normative frameworks that are in*

place. Starting from analysing child marriage discourse at the international level, I then move to discuss the political contestation over child marriage at the national level. There, I use a case study on Indonesia, where the tension over the issue arises between conservative Muslim organizations and liberal groups of human rights advocates. To zoom in further, I investigate child marriage as a social practice on the Indonesian island of Bali, where I conducted fieldwork over six months.

Chapter 2 investigates the dominant international discourse of child marriage and how the concept has been developed, by analyzing major international reports and rules about child marriage. Under the international discourse, since when and how did people under 18 become too young to marry, and why did the age limit become 18? The analysis shows that the current international framework of child marriage has been developed through a monological process of international standard making, which lacks consideration for diverse views on what 'child' and 'marriage' mean.

Chapter 3 examines the way the Indonesian government regulates a social reality whereby children continue to marry under its law while at the same time setting goals to comply with the international standards to end child marriage. In Indonesia, law-making in family law involves conflict between progressive and conservative ideas, and consequently there is friction within current family law and laws regarding human rights. Court decisions and interviews show that judges make compromises within their discretion, and state law is creatively interpreted and applied at the village level. The resistance both in the law-making and implementation process, arising from religious concerns of conservative Muslims in a rapidly modernizing Indonesian society, is an obstacle for the government's international commitment to end child marriage.

Chapter 4 explores how states' legal agents in Bali navigate state law through local concerns and customary law, dealing with child marriage arising from teenage pregnancy. Although Bali is a Muslim-minority area of Indonesia and knows relative leniency towards premarital sexual intercourse, teenage pregnancy outside of wedlock in Bali is considered an 'emergency', where the morality of the community is at stake. Families, customary authorities and state agents collaborate to find a way to fit the emergency situations into locally accepted normative structures. In particular, judges take a moral pragmatic approach of using law to restore harmony and peace in the community.

Chapter 5 tries to understand why some children marry under the age of 18 in Bali, and the contexts in which they themselves make the decision to marry. Interviews with various actors in Bali, including youth themselves, healthcare personals, teachers and legal practitioners, explain that child marriage for young people is a socially accepted solution to unplanned

teenage pregnancy. In a society where abortion is illegal and birth outside of wedlock is practically difficult, child marriage can be a way for adolescents to manage their romantic and sexual relationships by accommodating modern social conditions within the customary and more communitarian normative structure.

Chapter 6, based on interviews in Bali with those who married below the age of 18, investigates to what extent and how these interlocutors exercised their 'agency' when the decision for their marriage was being made. The analysis proves that children themselves do and are able to make the decision to marry, albeit under relational and situational constraints at times. The current international human rights framework therefore oversimplifies the realities of child marriage and fails to walk the thin line between empowerment and protection of children.

The analysis and discussions throughout the chapters reveal the multi-layered reasons why children marry. Structural explanations (e.g., lack of opportunities and oppressive social structures) are important but not exhaustive. By exploring the subjective reasons (i.e., what for them are the reasons to get married) by listening to children's perspectives, this dissertation shows that many of them decide to marry for love, desire, to belong to the community, and for new opportunities and hopes. This understanding of reasons for child marriage rests on relational understandings of agency. While a libertarian conceptualization of agency propagates to enhance one's capacity to decide on one's own life independently from 'the traditional order' – in other words, structure – a relational understanding of agency recognizes a capacity not only to resist the structure but also to inhabit it. In this logic, children's acts of marrying (following the structure) and their act of not marrying (resisting the structure) can equally be an outcome of exercising agency.

Acknowledging children's agency to marry highlights that the current child marriage framework is constructed on a partial understanding of why they marry. For instance, adolescents' sexuality is missing from the debate, while it is at the heart of child marriage. Social (un)acceptance of pre-marital sexual intercourse and (in)availability of tools for reproductive health are the core factors for why teenagers marry in Indonesia. Nonetheless, the framework tends to *traditionalize* the problem: turning a global social challenge (teenage pregnancy) into a cultural phenomenon ('harmful traditional practice') that is alien to the West or to the upper-middle-class in the South. The label 'harmful traditional practice' obscures the social reality and prevents policy efforts from being effective. The focus on 'banning' or 'eradicating child marriage' will not solve the underlying social problems, such as lack of tools and knowledge about reproductive health. Consequently, the framework is currently more constraining rather than liberating, and limited in its effectiveness and emancipatory power.

I conclude that overcoming the 'blind spot' of the human rights framework needs a twofold shift: first, an epistemological shift to deconstruct the dominant narrative; second, a procedural shift to include multi-cultural dialogues. If the child marriage framework remains monological and categorical, it fails to incorporate the diverse views on what a child means, therefore, resulting in a protectionist approach of liberal paternalism that misdirects policy designs. As the dissertation shows, the current framework leans too much towards protection and unwillingly sacrifices the empowerment. Seeking a balance in this dilemma, I argue that a more empowerment-focused approach to child marriage is better suited to achieve the human rights and development goals. Policies for child marriage should be designed to encourage children's participation in and collaboration with adults in decision-making, where they are informed of their decision's consequences. Government policies and NGO programs can also be better crafted to provide resilience-based support for married children. Only then, can children, both married and not married, lead the lives they wish to live.