

# **Child marriage, not all alike**

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Child marriage, defined by international organisations as the marriage of someone under the age of 18, has come under increasing scrutiny in Indonesia in recent years. Several legislative changes have been initiated since 2014 to raise the legal marriageable age, responding to a growing public demand for government regulations to ban child marriage. These legislative initiatives have noble intents: to uphold human rights norms, to protect children and to empower women. However, they do not offer an effective solution to the prevalence of child marriage in Indonesia, and worse, they could aggravate the problem.

Even if child marriage is banned by law, children would continue to be married outside of the legal system, as long as the motivation remains. Child marriages would go underground, rendering the married couple legally unprotected, and therefore even more vulnerable. Furthermore, besides the stereotypical cases of forced child marriage driven by poverty, there is much diversity in types of child marriage in Indonesia. By failing to take this diversity into account, the proposed legal reform, that is one-size-fits-all in nature, fails to address the broader underlying issues that spur child marriage in the first place.

## **Politics of child marriage**

Debates on the marriageable age are in fact not new but started a century ago under the Dutch colonial government. At that time, the European standard was that girls were allowed to marry at the age of 15, and boys at 18. The colonial government identified marriage below those ages as a cause of poverty, standing in the way of development, and thus attempted to prevent and forbid it by law. But enforcement at the community level continued to fail due to gaps between government and local realities, including the strong influence of local religious actors.

The debates and contestations continued after independence, notably in the drafting process of the 1974 Marriage Law. This law was a compromise after a political struggle between groups advocating progressive ideas of women's rights and those favouring more conservative ideas of marriage based on certain interpretations of Islamic texts. While the initial draft proposed the marriageable age to be 18 for women and 21 for men, aiming at elimination or reduction of child marriages, strong opposition from conservative political parties such as the Islamic PPP (United Development Party) led the government to lower the minimum age of marriage to 16 for girls and 19 for boys. The 1974 Marriage Law is still used as the main legislation dealing with all marital matters for Indonesian citizens. But the controversy has since continued.

As the 'End Child Marriage' call has become a focal point of international human rights campaigns over the last decade, Indonesian women's and children's rights activists have joined the cause and started to act at the national level. The Indonesian government has come under growing international pressure and obligation since the enactment of the 1984 Convention on the Elimination of Discrimination against Women and the 1990 Convention on the Rights of the Child – and recently its commitment to the United Nations Agenda for Sustainable Development Goals, which includes elimination of child marriage. In 2014, women's and children's rights activists in Indonesia challenged the marriageable age by putting forward a judicial review request. They demanded that the marriageable age be raised to 18 for girls, but

the Constitutional Court rejected this review, concluding that the current minimum age was not unconstitutional. The majority of judges placed more weight on the views expressed by Muslim organisations than those of moderate Muslim and non-Muslim experts. Women's and children's rights activists then turned directly to the president, requesting a presidential decree to end child marriage. President Joko Widodo has officially acknowledged the significance such a legislative effort would hold, but the decree has yet to materialise. Still, in 2015 and 2016, some regional regulations (in Yogyakarta, West Nusa Tenggara and South Sulawesi) were enacted to prevent child marriage, and some of them set the local marriageable age above the age stipulated in the 1974 Marriage Law. Indicating that change is possible, these measures fuel activists' efforts to end child marriage through legal reform.

## **Marriages go underground**

The question is whether or not legal measures will be that effective. Even if the marriageable age is raised, there are many ways to get married outside of the state legal system. During my research in West Java and Bali I encountered several methods that are commonly used to dodge the legal marriageable age, facilitated by local actors at the village level. One such method is to change the birthdate of the bride or groom in the required documents, so they can receive their official marriage certificates right after the religious ceremony. Postdating the marriage certificate is another common method. At the wedding, no certificate is issued; the assistant marriage registrar at the village level just notes the marriage in their register, without assigning a number. When the bride or groom has reached the proper age their marriage is registered with an official number in the archives and they receive their postdated certificate.

Such forms of illicit manipulation can be costly, with lots of small bribes paid to local actors throughout the process. Likewise, high costs are incurred in the case of marriage dispensation, or seeking permission in court, which is another way to legalise an underage marriage. Applicants of such dispensations, usually the parents of the young bride or groom, have to travel to the court (in some cases hours away from their village) at least three times, plus pay for the procedure. Those procedures can cause more trouble for families already facing trouble in their community, for instance due to the social stigma attached to pregnancy out of wedlock, which is the most common reason for early marriages.

A fourth way to marry an underage bride or groom is *nikah siri*, a religious marriage that will remain unregistered by state law. Such a marriage is facilitated by religious leaders in a private setting, and simply requires the presence of a legal guardian, who is typically the father or a paternal grandfather or brother of the bride. These unregistered marriages are especially problematic, as they leave wives and children vulnerable, lacking legal protections such as inheritance rights or the right to a legal divorce procedure. Moreover, children born from unregistered marriages cannot obtain a birth certificate, which is needed to have access to education. A so-called 'single birth certificate' can be issued outside of marriage, but these 'deviant' certificates often bring with them a social stigma and bullying for the child. Despite the financial and social costs involved, underage marriage remains prevalent. Raising the marriageable age is likely to increase the frequency of those underground marriages, and therefore increase the number of vulnerable children and families to be made even more vulnerable.

## **Child marriage, not all alike**

Campaigns and legislative measures to ban child marriage are often motivated by the stereotypical image of child marriage, which is a forced one driven by poverty, typically with a big age gap between an unhappy small girl and an abusive older man. However, in reality there is much diversity in types of child marriage.

It is undeniable that forced child marriages do occur, and that these are often accompanied by a range of problems. This includes physical and other forms of abuse, often exacerbated by the husband's drug or gambling addiction, financial problems due to lack of stable employment and child-rearing costs, reduced educational opportunities for the children, or reproductive health issues for the wives, and eventually divorce – or worse, not being able to divorce. Yet, there are also happy underage marriages. As one couple who married at the age of 16 (for the girl) and 17 (for the boy) told me: 'We are a happy small family, and we will be happy when we stay together as a family.' The girl's family had insisted on the marriage, knowing that the couple had been in a relationship for two years and had lived together for three months. But the couple also said: 'Both of us were very keen to get married, so no one could separate us,' and 'we wanted to have a child.' The boy being underage at that time, their marriage was registered by manipulating his age on paper. As Tolstoy wrote, 'Happy families are all alike; every unhappy family is unhappy in its own way'. Indeed, although child marriage can be one cause of unhappy families, the key to happy families is not the age threshold of 18.

Furthermore, child marriage is diverse in its drivers, too. Some child marriages are indeed driven by economic hardship, but others are rather motivated by religious conviction or local perceptions about marriageable age. In other cases, children marry to escape a depressing situation in a broken home. And notably there is an increasing number of underage marriages based on 'mutual love' ('suka-sama-suka'), like the happy couple above. In my research, most of the couples who married before the age of 18 were in a romantic relationship prior to their marriage. They decided to marry of their own will, although some did experience pressure from their parents who were concerned about the girl's reputation in their community, especially when the girl gets pregnant. In some cases where parents disapprove of the marriage, teenage couples elope ('kawin-lari') to validate their marriage under customary law. '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,' a girl who eloped with her boyfriend told me.

## **Marriage and sexual morality**

One underlying reason for most underage marriages is the social stigma attached to sexuality outside of marriage. When adolescents' dating practices and romantic relationships become visible and too intimate, their parents feel the need to marry them sooner rather than later to avoid pre-marital sexual intercourse and pregnancy. When girls do become pregnant, there seems to be no other way to avoid the social shame than getting her married as soon as possible; it is not even necessary for her to marry the father of the unborn child, as long as the child is born in marriage. Granting marriage dispensation in court, for judges too, is a way to 'protect the children' from social stigma.

Sometimes adolescents themselves also try to get married to avoid stigma and gain autonomy over their own sexuality. These adolescents often feel conflicted between clashing moral values: on the one hand, liberal values that are promoted through westernised education, media and peers, and on the other hand religious and traditional teachings promoted by religious schools and groups, families and the state. For adolescents who feel trapped between 'modern' and 'traditional' ideas of sexuality and marriage, the decision to marry often is a way to exercise

their romantic desires and sexual autonomy within socially accepted limits. A girl who married her boyfriend after becoming pregnant told me: 'Maybe I was too free at that time. But when I got pregnant, there was no other way than to get married. Otherwise, our family would have been kicked out of the local community.'

While feminist groups and human rights advocates typically frame the issue of child marriage in terms of poverty, exploitation, gender inequality and reproductive health, child marriage in Indonesia is, to a large extent, a matter of sexual morality. Adolescents lack an environment for safe and protected sex, given that teenagers' sexuality is seen as a moral threat to society. In this context, the government tries to control sexuality through legislation, and early marriage is one way to control children's sexuality. Raising the marriageable age, however, will affect adolescents' sexual autonomy. If marriage under the age of 18 becomes prohibited in Indonesia, while pre-marital sexual intercourse remains a social taboo, will the sexual autonomy of those under 18 be further denied?

### **A symptom or a cause?**

Child marriage is a symptom, not a cause, of the socio-economic troubles facing many adolescents in developing countries, as well as a symptom of conflicting moral values. The one-size-fits-all nature of the proposed legal reform fails to recognise the diversity in child marriages. Even if the marriageable age is raised, underage marriages will continue underground as long as social needs for marriage remain.

To achieve progress in women's and children's rights, local concerns must be taken into account. In the case of child marriage in Indonesia, the issue seems difficult to resolve if socio-economic needs as well as social needs, such as getting married in order to avoid stigma, are not addressed as well. Policy efforts and public campaigns would do well to not only focus on the 'End Child Marriage' mantra, but also take into account the context of local sensitivities in which adolescents need to navigate conflicting moral values and pressures on their sexual autonomy.

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