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## WOMEN, LAW AND POLICY: CHILD MARRIAGE PRACTICES IN INDONESIA

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### Abstract

Child marriages are common throughout Indonesia. This is due to a strong influence of Indonesian customs and religion that strongly influence the lives of its people. It is worth pointing that marriage age arrangements in Indonesian Marriage Law reinforces that legal age for men is 19 years and 16 years for women. The 2012 statistics show that Indonesia is the 37<sup>th</sup> highest in the world in child marriage, while at the Southeast Asian level, this country ranks second after Cambodia. The ranking went up dramatically since in 2016, based on UNICEF, Indonesia ranked the 7<sup>th</sup> in child marriage worldwide. This means that the practice of child marriage in Indonesia happens, especially to women at the age of 18 years, and there is no discrimination related to the age of marriage. Against this matter, there has been a file for judicial review that demands marriage age for men and women to be pegged at the age of 18 years. However, the Judge of the Constitutional Court, through Decision Number 30-74/PUU-XII/2014, states that age of marriage remains valid for the 19-year-old for man and 16-year-old for women. The struggle does not stop there because at this time, there a national movement of STOP CHILD MARRIAGE formed by civil organisations in cooperation with the Commission of Child Protection and Ministry of Woman Empowerment and Child Protection. This movement sees that the practice of child marriage is a national emergency problem that must be addressed seriously. Further, this movement demands immediate enactment of government regulation in favour of the law which must promptly revise the Marriage Law, especially related to the marriage age.

**Keywords:** law; Child Marriage and Woman empowerment.

### 1. INTRODUCTION



Figure 1<sup>1</sup>  
*Indonesian Maps*

Indonesia is a large nation located in Southeast Asia region. As a large nation, Indonesia consists of numerous islands consisting of Sumatra, Java, Kalimantan, Sulawesi, Papua and many more. In Indonesia, there is a huge diversity between one region and another in terms of ethnicity, culture, religion, and language. Even so, no problem arises since the

nation has "Bhineka Tunggal Ika" as the slogan which means that although different in all things, the people shall remain united as Indonesian.

The total population of Indonesia, based on the Central Bureau of Statistics (hereinafter referred to as *Badan Pusat Statistik* - BPS) in 2014-2015 is 254.9 million persons, consisting of 128.1 million men and 126.8 million women.

In Indonesia, there are relatively many underage marriages or child marriages in almost all areas. By definition, child marriage is a marriage consummated by those who are not yet 18 years old. Child marriage is widely acknowledged to be a harmful sociocultural practice that is both a cause and an outcome of human rights violations. Defined as marriage or cohabitation before the age of 18, child marriage undermines a girl's rights to autonomy, to live a life free from violence and coercion, and to attain an education.

1. <https://www.beautifulholidays.com.au/travel-guide/asia/indonesia/maps/index.php>

Because a husband frequently expects his wife to bear children soon after the marriage, child marriage also permits sexual exploitation and places a girl's health at risk. In addition, children of adolescent mothers start their life in a disadvantageous point, thus perpetuating a cycle of poverty and relative deprivation<sup>2</sup>. The practice of child marriage in Indonesia cannot be separated from the socio-economic, cultural and religious conditions that grow and thrive within the society. In fact, religion has a strong impact on the implementation of child marriage in Indonesia. In the country, it is usual that the Law accommodate religious practice by exempting them from the general rule that should be obeyed<sup>3</sup>. Marriages involving children are arranged by families and belonging communities in order to find the girl or boy a proper person to marry<sup>4</sup>. Child marriage is a manifestation of tradition or custom as a result of a combination of social, cultural and economic factors<sup>5</sup>.

Child marriage is a discriminatory practice, especially against girls, and is a violation of human rights in general that should be prohibited anywhere in the world. In practice, however, child marriages still occur in several countries. In several parts of the world, the gender-

based discriminatory practice on women is predominantly caused by the impact of religion and tradition. Women are always treated as minorities and sometimes as second-class citizens whom the face can be seen, but the voice cannot be heard<sup>6</sup>.

According to a study, there are over 60 million marriages, among all existing marriages worldwide, consist of minor children. These marriages include approximately 30 million in Southern Asia, 14 million in African Sahara and 6.6 million in Latin America and the Caribbean. Furthermore, in some regions of India, 50% of the girls' population marry at early ages. Early age pregnancies that appear as a result of these marriages are defined as a serious healthcare problem in the world since 1960. In Turkey, child marriages can be found in one out of four marriages as well as one out of three marriages in some regions. Research of Turkish Population and Health Research (TPHR) performed on 8867 women between the ages of 20 and 49 in 2008 determined that 40.3% of women married before the ages 20 years, 22.2% married until 18 years and 4.4% married before 15 years. Marriages before 15 years of age which was 7.6% in 1998 were detected as 5.0% in 2003 and 4.4% in 2008 in our country<sup>7</sup>.

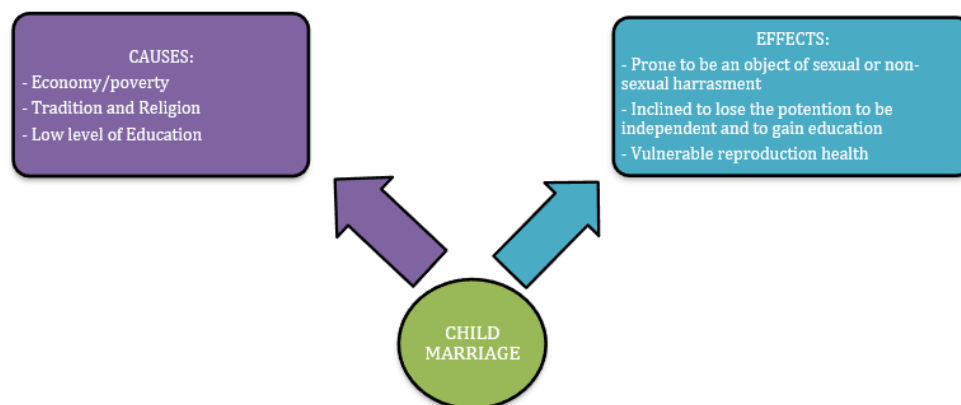


Figure 2  
The Causes and Effects of Child Marriage

2. Belinda Maswikwa, *Minimum Marriage Age Laws and The Prevalence of Child Marriage and Adolescent Birth: Evidence from Sub Saharan Africa*, International Perspective on Sexual and Reproductive Health, Vol 41, number 2, June 2015, page 58-68
3. Roderick M. Hills Jr., *Decentralizing Religious and Secular Accommodations, Institutionalizing Rights and Religion Competing Supremacies*, Edited by Leora Batnitzky and Hanoch Dagan, Cambridge University Press, page 108
4. Guilia Granata, *Child Marriages today: Which perspective for girls?*, Interdisciplinary Journal of Family Studies, XX, 1/2015, page 38-53
5. Biswajit Ghosh, *Child Marriage, Society and The Law, A Study in A Rural Context in West Bengal, India*, International Journal of Law, Policy, and The Family, vol. 25 no.2 August 2011, page 205
6. Ebenezer Durojaye, *Woman But Not Human, Widow Hood Practices and Human Rights Violations in Nigeria*, International Journal of Law, Policy, and The Family, vol. 27 no.2 August 2013, page 176
7. Bulut Kasim, Uysal Cem, et al, *Evaluation of The Early Age Married Girls Applying to Our Department*, Open Journal of Pediatrics, 2015, page 334-338)

There is a similarity of causes and effects of child marriage that can be mapped from the occurrence of child marriage practices occurred in some countries worldwide. The following are some of the main causes of child marriage<sup>8</sup>.

### *1.1 Poverty*

For families living below and within poverty line, marrying their young daughters is a very important strategy for survival (from a financial perspective). This means the family has reduced one burden to be fed, clothed and educated. In Asia and Africa, the importance of financial transactions in marriage tends to encourage the local families to immediately marry off their daughters. To take a case in point, in Saharan culture, the parents receive a generous "Bride Price" when marrying off their children prior to puberty. In Bangladesh, India, Pakistan and Nepal, generally, parents feel that the burden of dowry they have to spend when they marry off their children will be reduced if their daughter married at a young age.

Globally, coercion of child marriage is more prevalent in poor countries. Furthermore, in that poor countries, child marriages are concentrated in poor families. For instance, in Senegal, girls from poor families are four times more likely to be married at a young age than girls from wealthy families. When living in difficult circumstances, parents are only confronted with few options concerning their daughters besides marrying them off.

### *1.2 Education and Economy Constraints*

Dropping out or not attending school at all has a positive correlation with getting married at a young age. Conversely, attending to school or, more importantly, higher education will protect girls from early marriage.

In several countries, sending girls to school is not a priority as opposed to sending the boys. In a society where the most important role for a woman is to be a good wife and mother, sending them to school and preparing them for work is not a strategic choice. In fact, when poor families want to send their children to school, they find it difficult to find quality schools around their homes and find it difficult to pay for the fees. It is usually

safer and more economical to educate boys than girls. This cornered poor families to choose the last option: to marry off their daughters.

### *1.3 Tradition and Religion*

In several areas, oftentimes, parents are pressured to marry off their daughters as quickly as possible to prevent them from becoming sexually active women prior to marriage. Women who are 'labelled' as sexually active would bring down the dignity of families and community around her. In many societies, marriage often determines the social status of women, thus, parents are also worried that if they could not marry off their daughters in accordance with social expectations, they will not be able to do that at all. Child marriage is also one of efforts to unite two (2) families, clans or tribes, and can resolve disputes and debts. As an illustration, in Pakistan, Afghanistan and some countries in the Middle East, marrying their daughter is a common practice to help families pay off debts or settle inter-familial conflicts.

Child marriage hampers physical, mental, psychological and intellectual growth, especially for girls. It is also susceptible for girls to experience violent acts, both sexually and non-sexually. Further, marriage will eliminate their chances to develop their potential to be self-reliant, useful to society and able to contribute to science.

As a result of these patterns, governments in developing countries are facing a high pressure to eradicate the practice with legal sanctions against parents who marry off their daughters before a standard age of consent. Those who are against child marriage argue that forcing parents to delay their children's marriage, especially daughter, will increase women's education attainment, reproductive control and decrease the incidence of domestic violence. Some governments are encouraging social programs to contain program rules designed to discourage the practice. For instance, a prominent micro-finance program in India excludes parents who marry daughters before the age of 17, and national education vouchers in Bangladesh exclude married girls. However, while statistics indicate that women who marry at young age fare worse, it is difficult to

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8. Anju Maltora, *The Causes, Consequences and Solutions to Forced Child Marriage in the Developing World. Testimony Submitted to U.S. House of Representatives Human Rights Commission, ICRW (International Center for Research on Women)*, Juli 2010, page. 3-5

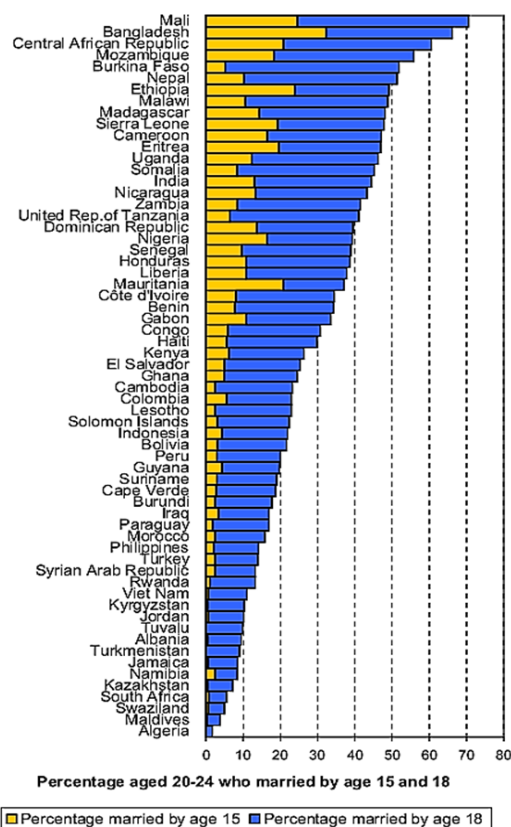
assess the extent to which these outcomes are driven by the timing of marriage as opposed to common factors related to poverty and traditional gender views that also hinder female advancement. Given that child marriage is most common in impoverished and culturally traditional settings, the observation that women who married young have on average less education does not imply that forcing girls to postpone wedlock would improve their outcomes<sup>9</sup>.

Central Bureau of Statistics of Indonesia (Hereinafter referred to as *Badan Pusat Statistik*/BPS) in 2008 noted that as many as 32.2% of girls and 11.9% of boys married under the age of 18 years. Further, BPS recorded that there is 18% birth of girls who married between the ages of 13-18 years. In Indonesia, 49% of children marry before the age of 18, and from 2 million of spouses, there 35% of whom are underage couples.

BPS also took note some areas in Indonesia that have the highest number of child marriages, namely West Sulawesi (37%), South Kalimantan (33.68%), Central Kalimantan (33.56%), West Kalimantan (32.21%) and Central Sulawesi (31.91%).

The latest data that can be recorded is as follows: according to the National Population and Family Planning Board (Hereinafter referred to as *Badan Kependudukan dan Keluarga Berencana Nasional* / BKKBN) of Bintan Regency in 2014, there are 858 children who married at the age between 13 and 16 years. Moreover, BKKBN of West Sumatra recorded that in 2010-2015, there are 6083 children married at the age of 13-15 years. Furthermore, BKKBN of East Java in 2012 took note that there are 5000 children of the age group of 15. Ministry of Religious Affairs of Indramayu District (West Java) recorded that in the period 2010-2012 there are 825 marriages and in 2013, there are 184 marriages involving children below the ages of 18 years and. Based on these data, it can be seen that Indonesia is listed as one of many countries where most child marriages occur. Statistically speaking, in 2012, Indonesia ranks the 37<sup>th</sup> of countries with highest performing underage marriages worldwide. As for ASEAN countries, Indonesia ranks the second after Cambodia. This can be seen in the picture below.

Percentage of women aged 20-24 in 2000-2010 who had married by age 18 in countries where the minimum legal age at marriage without parental consent is 18 years or over



Sources: MEASURE DHS, ICF Macro (2011). DHS Reports, accessed from <http://www.measuredhs.com/publications> on 20 December 2011; UNICEF (2011). Multiple Indicator Cluster Surveys - Available reports/datasets by country, accessed from [http://www.childinfo.org/mics\\_available.html](http://www.childinfo.org/mics_available.html) on 20 December 2011; United Nations, Department of Economic and Social Affairs, Population Division (2011). *World Fertility Policies 2011* (United Nations publication, Sales No. E.11.XIII.5).

Figure 3  
Percentage Aged 20-24 who Married by Age 15 and 16 Measure DHS ICF Macro (2011)

## 2. DISCUSSION

### 3.1 The Regulations Regarding Marriage Age

Before 1974, the Indonesian population was subject to a variety of marriage regulations inherited from the colonial state. In its typically pragmatic manner, the colonial Government never attempted to bring all citizens under one statute, but instead only intervened in family matters if this was required by external pressures—for instance, from the church in the Netherlands that wanted a special regulation for their fellow Christians in the Indies. From the 20<sup>th</sup> Century onwards, the administration's moral convictions played a more important role and led to

9. Erica Field and Attila Ambrus, *Early Marriage, Age of Menarche, and Female Schooling Attainment in Bangladesh*, *Journal of Political Economy*, Vol 116, no 5, 2008, page 881-930

some limited interventions. The reasons were basically the same as those being currently cited by the Indonesian Government: preventing child marriage, controlling polygamy, countering the birth of illegitimate children and protecting women against unfair divorce proceedings. Unification never took place, however, and the population remained subject to differing legal regimes<sup>10</sup>.

Islamic law, in this case, the Qur'an and hadith do not specify the minimum age to marry. Commonly known requirements are *baligh* (mature), sensible, able to distinguish good and bad so as to give his/her consent to marry. Article 16 of the Compilation of Islamic Law in Indonesia (*Hereinafter referred to as Kumpulan Hukum Islam/KHI*) states that: *Marriage is based on the approval of the prospective couples. The form of approval of a prospective bride may be expressed and concreted statements in writing, oral or gesture, but may also be in the form of silent, in the sense as long as there is no firm rejection.*

The decision of Fatwa Commission of the Indonesian Ulama Council (*Majelis Ulama Indonesia/MUI*) states that in the Islamic Jurisprudence literature, there is no explicit provision regarding the age limit of marriage. Thus marriages performed by old people are considered legitimate as long as they are qualified and harmonious, as is also valid for young children<sup>11</sup>. Literature unanimously, while referring to the Sharia authorities in the state's enactment, asserts that under the Sharia law, a Muslim girl below the age of 16 can marry, if she has the consent from the Sharia court. The Sharia court is supposed to rule on every case individually. One of the earliest States in Malaysia, Johor, provided that a marriage shall not be solemnized if the woman is less than 16 years of age or the man less than 18 years, except for specific reasons and with the approval of the Kadi Besar<sup>12</sup>.

Customary law does not specify a certain age limit for people to perform marriages. It allows the marriage to be

performed when both or one of the spouses is still a child<sup>13</sup>. This can happen because, in the Customary Law, marriage is not only the union of both spouses but also the unity of two families. According to the Law, child marriage is not a problem since the two spouses will be guided by their family, which in this case, have become two families, so the Customary Law does not prohibit child marriage. Indonesian Customary Law, which differs from one region to another, is an unwritten custom law that does not recognize the standard of age to declare anyone to be eligible to marry. Commonly, a child is married when he/she is thought to have reached a certain phase or event in his/her life, and this is often unrelated to age.

Law No. 1 of 1974 on Marriage (hereinafter referred to as Marriage Law) states that marriage is only permitted if the man has reached the age of 19 years and the woman is 16 years. The marriage of children below 18 is widely recognized in international human rights agreements as a discriminatory global practice that hinders the development and well-being of hundreds of millions of girls. Using a new global policy database, they analyze national legislation regarding minimum marriage age, exceptions permitting marriage at earlier ages, and gender disparities in laws. While their longitudinal data indicate improvements in frequencies of countries with legal provisions that prohibit marriage below the age of 18, important gaps remain in eliminating legal exceptions and gender discrimination<sup>14</sup>.

In Indonesia, it is possible to deviate from the minimum age of marriage provisions by requesting a dispensation to the court or other officials appointed by both the bride and groom parents. The dispensation request to solemnize a marriage below the minimum allowed age limit results in a higher marriage rate for children in Indonesia. This can be seen from the following data:

10. Adriaan Bedner and Stijn van Huis, *Plurality of marriage law and marriage registration for Muslims in Indonesia: a plea for pragmatism*, Utrecht Law Review, Vol 6 Issue 2 (June) 2010, page 175-191
11. HM Asrorun Ni'am Sholeh, "Pernikahan Usia Dini Perspektif Fikih Munakahah", dalam *Ijma' Ulama*, 2009, Majelis Ulama Indonesia, page. 213. [Dikutip dari Supriyadi dan Yulkarnain Harahap, Perkawinan Di Bawah Umur Dalam Perspektif Hukum Pidana Dan Hukum Islam](#), Universitas Gadjah Mada Yogyakarta, 2009
12. Iriani Ibrahim, Faridah Husain, et al, *The Child Bride: Rights under the Civil and Shariah Law*, Social and Behavioral Sciences Journal, Vol 38, 2012, page 51-58
13. Hillman Hadikusuma, *Hukum Perkawinan di Indonesia Menurut Hukum Adat dan Undang-Undang Nomor 1 Tahun 1974*, Pradnya Paramita, Jakarta, 1995, page. 71. [Marriage Law in Indonesia According to Customary Law and Law No. 1 of 1974]
14. Megan Arthur, Alison Earle, et al, *Child Marriage Laws around the World: Minimum Marriage Age, Legal Exceptions, and Gender Disparities*, Journal of Women, Politics & Policy Vol. 39, Iss. 1, 2018, page 51-74



Figure 4  
Data on Marriage Dispensation

Presidential Instruction No. 1 of 1991 on the *Kumpulan Hukum Islam* (KHI) Article 15 states that the age limit of marriage is the same as Article 7 of Law No. 1 of 1974, but with additional reasons: *for the benefit of families and households*.

KHI also mentioned that the marriage may be cancelled if it violates the age limit of marriage as stipulated in Article 7 of Law No. 1 of 1974. Parties who can apply for cancellation of marriage are: (1) families in lineage that is vertically above or below of husband or wife; (2) husband or wife; (3) the officials authorized to supervise the conduct of marriage stipulated by the Law; (4) interested parties who are aware of any defects in the pillars and marriage requirements under Islamic law and legislation.

Law No. 35 of 2014 as amended from Law No. 23 of 2002 on Child Protection as a Human Rights Instrument also does not mention explicitly about the minimum age of marriage other than affirming that children are those under 18 years of age. Also mentioned in the Law that the implementation of child protection is based on Pancasila and the 1945 Constitution of the Republic of Indonesia, as well as the basic principles of the Convention on the Rights of the Child, include:

- non-discrimination;
- the best interests of the child;
- the right to life, survival and

development; as well as

- appreciation of the child's opinion.

Child protection aims to ensure the fulfilment of children's rights into be able to live, grow, develop and participate optimally in accordance with the life and dignity of all human being. Further, to be protected from violence and discrimination, to realise quality, noble and prosperous Indonesian children. Concerning child marriage, Article 26(1) letter (c) of Child Protection Law 2002 states that: *Parents are obliged and responsible for: (c) preventing the occurrence of marriage at a young age*.

The laws on marriage in other countries, in general, determine that the prospective spouses should have reached the age of 18 years, and if they will be married under 21 years of age, they have to obtain the consent of parents or guardian of both sides<sup>15</sup>. It further states that the validity of the marriage is determined by the following requirements<sup>16</sup>.

- both parties must be at least 18 years old
- both parties shall not have close familial relationships
- both parties should be unbound in the previous marriage
- marriage should not be done between the same sex

15. Leong Wai Kum, *element of family law in Singapore*, 2<sup>nd</sup> edition, Lexis Nexis, 2013, page 32

16. Jennifer Yeo, *A Marriage Guide for The Young Adult, I want to marry you*, world scientific publishing 2014, page 20

- both parties must follow all rules of marriage law

The Human Rights Instrument does not mention explicitly the marriage age limit. The Convention on the Rights of the Child 1990, ratified by Presidential Decree No. 36 of 1990, does not mention the minimum age of marriage other than defining that children are those under the age of 18. Besides, the Convention requests all State Parties to protect and present child-friendly legislation within the framework of protecting the best interest of the child.

The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1964 states that *all State Parties in the Convention shall endeavor to establish a legislation to regulate the minimum age of marriage and stipulate that marriages that are conducted beyond the prescribed minimum age shall have no legality, unless the authorised official establishes a certain dispensation for a reasonable cause by promoting the interests of the prospective spouse.*

The United Nations (UN) Convention on the Rights of the Child (CRC) provides that “[i]n all matters affecting the child, the views of the child must be given due consideration, with the right to express those views freely” (article 12(1)). For example, child marriage is criticised because the child cannot freely make a choice by reason of her being underage<sup>17</sup>.

Actually, Indonesian legal system stipulates a provision that prohibits child marriage. In fact, the provision has a criminal penalty as contained in Article 288 of the Penal Code stating that *any person in a marriage, have conducted intercourse with a woman he knows or should duly suspect that the woman is not yet to be married, if it results in injury, is threatened with a maximum imprisonment of four years, If serious injury, is punishable by imprisonment of a maximum of eight years and if the result of death, is punishable by imprisonment of twelve years.* In reality, however, the people do not adhere to the practice of child marriage still occur in almost all parts of Indonesia.

### 3.2 Actions Taken to Reduce the Practice of Child Marriage in Indonesia

There are several organisations and other elements of communities in

Indonesian who are still concerned about the wellbeing of Indonesian girls who might be subjected to early marriage. They made a petition for judicial review to the Constitutional Court to amend the minimum age of marriage to be 18 years through a document No. 30-74/PUU-XII/2014. The Constitutional Court, however, ruled that the petition for judicial review was rejected on the grounds that age is not a major aspect of all social problems occurring within the institution of marriage, thus the Constitutional Court still maintains that the minimum age limit of marriage is 19 for men and 16 for women. The effort to raise the minimum age of marriage to 18 years is again proposed by the community who is very concerned about the rights of girls in Indonesia by re-filing the judicial review to the Court through the lawsuit No. 22/PUU-XV/2017. The Court, however, has not yet ruled any decision of the matter.

The following are some recommendations to suppress the practice of child marriage in Indonesia.

- The need to provide and strengthen comprehensive reproductive and sexual health education for adolescents from an early age to develop their awareness.
- The need for synergy among the community, organisations and government agencies.
- The need to strengthen the role of traditional and religious leaders.
- The need to review the provisions concerning the marriage age limit contained in the Marriage Law.
- The need to provide an understanding of the legality of marriage for the long term.

As a member of the United Nations, Indonesia is bound to implement the Sustainable Development Goals (SDG) program declared by the United Nations, which shall be followed up by each Member State. The objectives of SDG are to end poverty, hunger, to improve health and education, as well as to eliminate the practice of child marriage. To realise the role of Indonesia in supporting the SDG, on 4 July 2017, the President has issued a decree No. 59 of 2017 on The Implementation of Sustainable Development Goals. One of the main

17. Onuora-Oguno Azubike, *Sexual Abuse and Child Marriage: Promise and Pathos of International human rights treaties in safeguarding the rights of the girl child in Nigeria*, South African Professional Society on the Abuse of Children : Child Abuse Research a South African Journal, 2015, page 78-87

points in the presidential decree is to ensure gender equality and empowerment of all women. It is expected that through this decree, there will be no practice of child marriage altogether in 2030 in Indonesia.

Different areas in Indonesia has different law implementation, through local regulations, there are provisions on the minimum age of marriage, for example in West Nusa Tenggara, each man and woman must be aged 21 years, and the government of Yogyakarta set minimum age of marriage to be 20 years old, while the BKKBN states that the ideal marriage age is between 21 to 25 years old.

The practice of child marriage in Indonesia has raised some concerns from the Indonesian people in general. Therefore, the communities have launched a slogan of STOP CHILD MARRIAGE. Furthermore, this movement urges the government to issue a Regulation in a Lieu of Law (PERPPU) which prohibits all practices of child marriage in Indonesia. The communities also demand the authorized institution to issue Fatwa of Haram to prohibit the practice of child marriage in Indonesia. They want the government to facilitate Indonesian children to be able to develop themselves by providing adequate formal education in addition to the obligation to implement the 12-year compulsory education that has been declared by the government.

### 3. CONCLUSION

Child marriage is legal in Indonesia since the provisions of the Marriage Law permit the occurrence of child marriage. This is obvious that the minimum age limit to marry in Indonesia is 19 years for man and 16 years for women. Even though this is legitimized by law, in practice, there are many elements within society who want to amend the provision, especially on the minimum age limit of marriage to be 18 years through a judicial review of the Law to the Constitutional Court. Actions have been taken by numerous communities, civic organisations and governments to suppress child marriage practices in Indonesia. Therefore, in 2030, it is expected that there will be no practice of child marriage in the country.

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