



Combating Child Marriage: A Comparative Analysis of Regulations in Indonesia and The Philippines

Ika Dewi Sartika Saimima¹, Johndex Emanuel S. Villarico², Widya Romasindah Aidy³, Mochammad Syafruddin Rezky Sanaky⁴

¹Fakultas Hukum Universitas Dirgantara Marsekal Suryadarma,

E-mail: ika.saimima@unsurya.ac.id

² University of Mindanao Digos College, E-mail: johndexvillarico15@gmail.com

³ Fakultas Hukum Universitas Nasional, E-mail: widya.romasindah@gmail.com

⁴ Auckland Law School, University of Auckland, E-mail: arimsrs@yahoo.com

Article Info

Received: 15th June 2025

Accepted: 30th September 2025

Published: 30th September 2025

Keywords:

child marriage; sexual exploitation; marriage dispensation.

Corresponding Author:

Ika Dewi Sartika Saimima,

E-mail :

ika.saimima@unsurya.ac.id

DOI:

10.24843/JMHU.2025.v14.i03.
p10

Abstract

Legal discrepancies regarding child marriage are apparent in the divergence between the legislation forbidding underage unions and the actual practices observed. Despite the elevation of the age restriction, the leniency with which courts issue marital dispensations, particularly in instances of out-of-wedlock pregnancies, engenders inconsistency in legal enforcement, hence perpetuating injustices against children's rights. The study topic aims to analyze the comparative distinctions in the legal frameworks of Indonesia and the Philippines concerning child marriage. This study aims to investigate and compare the legislative frameworks regulating child marriage in Indonesia and the Philippines, highlighting their differences and similarities. The study concept and methodology employ a qualitative approach utilizing a comparative legal framework. The analytical method employed is normative legal analysis. The research findings suggest that granting marital dispensations that violate child protection principles may also breach the Child Protection Act, which seeks to provide the highest level of safeguarding for children against all types of abuse, exploitation, and discrimination. Indonesia and the Philippines are encountering distinct hurdles in tackling this problem. Indonesia has established a dispensation system permitting child marriage under certain circumstances, but the Philippines has enacted a complete prohibition on child marriage. The legislation forbids child marriage and enforces more severe penalties for anybody who participates in or enables it. The Philippines' prohibition of child marriage signifies a substantial step in the nation's struggle against this detrimental practice.

I. Introduction

Marriage is one of the most important phases of human life. For many people, marriage is a way to build a family and continue the family lineage. Society recognizes marriage as

a sacred bond through state institutions conducted through legal formalities based on religious rituals and customs. Therefore, marriages rooted in religious traditions and customs have a significant impact on social stability as they extend and strengthen family bonds. In traditional practice, marriage is viewed as a continuation of family inheritance.

Marriage law serves as a cornerstone in maintaining social order, protecting the rights of every individual, and encouraging marriage to form a responsible family. Marriage is legally entered into by a person of legal age under the norms of the law. The legal age for marriage is 18 years or older, and if conducted under that age, it is called early marriage. The phenomenon of early marriage among minors remains prevalent across the globe in contemporary society. The United Nations International Children's Emergency Fund (UNICEF) records that 4 out of 10 young women experience child marriage before the age of 18. West and Central Africa have the maximum number of juvenile marriages, while East and South Africa, South Asia, and Latin America and the Caribbean have the lowest rates (32 percent, 28 percent, and 21 percent, respectively).¹ UNICEF also noted that the highest prevalence of child marriages is in South Asia, where 47 percent of girls are married before the age of 18, while in East Asia and the Pacific it is 13 percent, and in Southeast and East Asia it is around 25 percent. Overall, it is estimated that one in four girls in Southeast Asia is married by age 18.²

Based on UNICEF data, researchers discuss child marriage in Indonesia and the Philippines, which are part of Southeast Asia. Child marriage is a widespread practice in both of these nations. the most prevalent causes of child marriage in Indonesia and the Philippines are poverty, culture, education, religion, and gender inequality. A significant difference in handling child marriage is that the Philippines has its own regulations prohibiting child marriage. The Philippines enacted Republic Act No. 11596, or the Child Marriage Prohibition Act, in 2022. This law establishes the minimum age for marriage at 18 years and imposes imprisonment on those who violate it. The Philippines imposes severe penalties on those involved in arranging, facilitating, or solemnizing child marriages. Child marriage is a violation that impacts society and poses a grave danger to a child's future. Therefore, child marriages are declared null and void from the start (void ab initio).

Indonesia has recently amended its marriage legislation to elevate the minimum marriage age for women. The aim of raising the marriage age is to equalize it with that of men, which is 19 years. Establishing the age of 19 is considered the ideal age for individuals to reach the physical and mental maturity necessary to build a successful marriage. Raising the minimum marriage age is expected to reduce divorce rates, improve maternal and child health, fulfill children's rights, optimize their development, and provide them with broader access to education.

Researchers previously mentioned various problems arising from child marriage that are extremely detrimental, including Ahmad Rusyaid Idris³ asserted in his research that child

¹ "Child Marriage Threatens the Lives, Well-Being and Futures of Girls around the World.," UNICEF, 2023, <https://www.unicef.org/protection/child-marriage>.

² "Child Marriage Is a Violation of Human Rights, but Is All Too Common," UNICEF, 2023, <https://data.unicef.org/topic/child-protection/child-marriage/>.

³ Ahmad Rusyaid Idris, "CONTEMPORARY ISLAMIC LAW IN INDONESIA: THE FULFILLMENT OF CHILD CUSTODY RIGHTS IN DIVORCE CASES CAUSED BY EARLY

custody arises from early marriage, resulting from premarital pregnancy. Premature marriages are susceptible to dissolution owing to the psychological immaturity of the partners. The research findings suggest that divorced widows and widowers from early marriages cannot fulfill the criteria for child custody. This problem is evident from the couple's failure to ensure adequate child safety post-divorce, along with the neglect of other rights, including lineage, support, custody (Hadhanah), and educational arrangements for the children. The mother is legally mandated to possess complete custody, but the father is responsible for covering living expenses. This criterion was overlooked due to the mother's status as a juvenile, rendering her too immature to meet essential responsibilities such as nurturing and teaching the children.

Putri Aiman Thalib⁴ asserted in her research that child marriage, performed under customary law, frequently neglects the kid's welfare, contravening contemporary human rights norms. Child marriage facilitated by marriage dispensation undermines child protection.

Amendments to the Marriage Act were also made in an attempt to reduce child marriages. However, considering the reality that Indonesian children remain in marriage due to parental pressure, even the marriage laws and regulations that grant marriage dispensation arguably contribute to the increase in child marriage. Indonesia and the Philippines are still grappling with the serious problem of child marriage. While the Philippines has made significant progress with strict laws against child marriage, Indonesia continues to face challenges despite legislative changes.

Based on the circumstances, this article focuses on the imposition of criminal sanctions on parents seeking a child's marriage dispensation on irresponsible grounds. Criminal sanctions are crucial to dealing with child marriages in Indonesia and the Philippines. They are imposed to deter irresponsible marriage dispensation requests, ultimately protecting children from adverse consequences. Implementing effective criminal sanctions in cases of child marriage dispensation requires strong enforcement mechanisms, increased awareness, and a cultural and religiously sensitive approach to ensure the well-being of children and provide legal certainty.

2. Research Method

This research uses qualitative methods with a comparative law design. The study will conduct a comparative legal analysis of the legal frameworks governing child marriage in Indonesia and the Philippines. This approach will facilitate an understanding of the differences and similarities in legal provisions, enforcement mechanisms, and the overall effectiveness of these laws. Data collection is done through:

1. Primary Sources: Compilation of fundamental legal documents, encompassing national statutes, regulations, governmental reports, and official data from both nations.

MARRIAGE," *Metro Islamic Law Review* 3, no. 1 (2024): 1-21, <https://doi.org/0.32332/milrev.v3i1.8907>.

⁴ Putri Aiman Thalib and Pieter Everhardus Latumeten, "Legal Problems of Minor Marriage in the Perspective of Customary," 4, no. 7 (2025): 1035-51.

2. Secondary Sources: Reviews of scientific articles, legal commentaries, case studies, and reports from international organizations such as UNICEF and Human Rights Watch.

Legislative Documents: Examination of specific legislative documents, including Indonesia's Marriage Act (Act No. 16 of 2019) and the Philippines' Republic Act No. 11596 (Anti-Child Marriage Law of 2022). **Analysis Framework:** Normative Legal Analysis: This involves a systematic examination of legal texts to understand the normative frameworks and principles underlying child marriage laws in both countries.

Comparative Evaluation: This analysis will compare and assess the effectiveness, enforcement, and social impact of these laws. Key factors for comparison include minimum age requirements, legal exceptions, penalties for violations, and protection mechanisms for affected children.

3. Result and Discussion

3.1. Religion And Social Cultural in Practices Child Marriages

Marriage serves as a means to establish a family and perpetuate lineage. Society recognizes marriage as a sacred bond established through state institutions and carried out through legal formalities based on religious rituals and customs. Therefore, marriages rooted in religious traditions and customs hold great significance for social stability as they extend and strengthen family bonds. In traditional practice, marriage is regarded as a continuation of family heritage.

Child marriage has a tremendous impact on children. They not only lose their youth, but child marriage also results in a loss of opportunity to play and continued education, further perpetuating the cycle of poverty. Additionally, child marriage threatens their reproductive health, makes them vulnerable to domestic violence, and hinders their ability to develop their full potential.⁵

Several developing countries have stated that child marriage poses significant problems for girls. In Baliakandi, Bangladesh, In 2019, more than fifty percent of all marriages involved individuals who were minors, which significantly contributed to the prevalence of adolescent pregnancies—a notable risk factor for perinatal mortality and various obstetric complications. It highlights the imperative for both national and international pledges to eradicate child marriage.⁶ Early marriage is a major issue that impedes girls' access to education and violates their basic human rights. Many girls are compelled to marry against their will, breaking international treaties that establish the legal age of consent as 18. Child marriage also causes complications such as obstetric fistulae, early births, stillbirths, and sexually transmitted illnesses. It also has a negative impact on child

⁵ J Herry Christian and K Edenela, "Terampasnya Hak-Hak Perempuan Akibat Diskriminasi Batas Usia Perkawinan," *Lex Scientia Law Review* 3, no. 1 (2019): 1-14, <https://journal.unnes.ac.id/sju/index.php/lslr/article/view/30723>.

⁶ Kyu Han Lee et al., "Child Marriage in Rural Bangladesh and Impact on Obstetric Complications and Perinatal Death: Findings from a Health and Demographic Surveillance System," *PLoS ONE* 18, no. 7 July (2023): 16-17, <https://doi.org/10.1371/journal.pone.0288746>.

brides' sexual and reproductive health, as they struggle to have safe sex with older partners.⁷

The phenomenon of child marriage in Indonesia became a hot topic of public debate following the marriage of Sheikh Puji, a boarding house leader in Banyuwangi, East Java, with a [12-year-old] girl in 2016. The marriage was consented to by both Ulfa's parents, who even filed a marriage dispensation with the Semarang District Religious Court in Ambarawa on September 29, 2008. However, the petition was not accepted because of the applicant's absence from the hearing twice. Besides, the complainant could not prove what was requested during the trial. Ulfa eventually married and became the second wife of Sheikh Puji. The marriage was carried out according to Islamic principles concerning marriage with a young, unmarried woman and was therefore considered legal. However, the marriage between Sheikh Puji and Ulfa violated three legal regulations, including Law No. 1 of 1974 on marriage, Act No. 23 of 2002 on the protection of children, and Law No. 21 of 2007 on reprisal against the offense of trafficking in persons.

Another well reported instance of underage marriage in Indonesia was the marriage of 55-year-old Rohaya with a 16-year-old boy named Slamet Riyadi. The public claims that Slamet married Rohaya's solely for her fortune. However, Slamet refutes these claims, asserting that their love for one another was the reason for the marriage. The marriage of Muhammad Alvin Faiz, the son of Arifin Ilham, was also a public debate as he was 17 years old with a three-year-old daughter. After five years of marriage, the marriage ended in divorce. Based on the child marriage examples, it can be seen that the conflict between Indonesia's written laws and Islamic law (fiqh) regarding child marriage highlights the issue of dual legal systems that guide society. This means there can be confusion about which law takes precedence: state law or religious law. In some communities, marriage is seen as legitimate if the couple meets certain qualifications and adheres to religious principles, regardless of state laws. In the case of Sheikh Puji's marriage, he likely believed he fulfilled Islamic requirements and therefore felt justified under Islamic law.⁸

In addition to child marriages carried out on religious grounds, child marriages also occur due to cultural practices. (or) Besides child marriages based on religion, cultural traditions also lead to child marriages.

⁷ Ine Nnadi, "Early Marriage: A Gender-Based Violence and A Violation of Women's Human Rights in Nigeria," *Journal of Politics and Law* 7, no. 3 (2014): 35-40, <https://doi.org/10.5539/jpl.v7n3p35>.

⁸ Z. Zulfiani, "Kajian Hukum Terhadap Perkawinan Anak Di Bawah Umur Menurut Undang-Undang Nomor 1 Tahun 1974," *Jurnal Hukum Samudra Keadilan* 12, no. 2 (2017): 211-22.

Table 1. Examples of child marriages in some regions of Indonesia

No	Terms of Marriage	Description
1	"Young Married/Manppanre Petta" : The Tribe Bugis	Due to social norms that emphasize family honor and social status, young marriage is seen as bringing honor to Bugis women and protecting them from negative stereotypes.
2	"Pasang Tarate" The Tribe Mandar	Being in the Mandar tribe, West Sulawesi, the "Pasang Tarate" tradition obliges girls to marry after entering puberty. This tradition is rooted in the belief that women who do not marry soon will bring shame to the family.
3	"Hidden Mmarriage" The Tribe Papua	The so-called "hidden marriage" tradition of young couples in Papua is carried out without the consent of parents. This tradition is generally disrupted by economic factors, in which families cannot afford to cover the cost of an official marriage.
4	" A large dowry"	The "high dowry marriage" tradition in East Nusa, Southeast, and Maluku is based on local cultural and social values that emphasize the significance of social and economic position in marriage. Behind the tradition of "high dowry" is the struggle of the family of the prospective bride to meet customary demands and keep the family's bonds. This tradition can encourage early marriages for girls as a solution to alleviate the financial burden.
5	Selling a daughter to pay off the debt	The exploitative practice of "selling daughters" to pay off family debts occurred in Indonesian society. This practice is a violation of children's rights. This culture-based early marriage often doesn't respect children's rights and hurts their health, education, and future.
6	Mapolong Tolang	Mapolong Tolang, This marriage is meant to strengthen a brotherly relationship or but for the rich and respected family in Madura, this marriage that their wealth should not pass into the hands of others. who is not a family, and besides, that person is not from the layers of society.

Source : Research, 2024

Based on the examples, some traditions view marrying a daughter young as a way to preserve family honor or social standing. This pressure may compel families to arrange marriages for their daughters prior to reaching the legal age. Child marriage also occurs due to misinterpretations of religious teachings. Traditional practices may sometimes intertwine with religious interpretations, and misinterpretations of religious texts regarding marriage age can be used to justify marrying children. Community pressure can further contribute to child marriage. In some communities with strong adherence to tradition, there might be social pressure to conform to traditional marriage practices, even if they contradict national law. This pressure can make it difficult for families to resist this practice.

A contributing element to the prevalence of child marriage is the concept of free marriage, which leads to pregnancy. Unfortunately, society frequently observes marriages that were preceded by premarital sexual relationships. This indicates that at the wedding ceremony, the bride is already pregnant with the groom's child. Islamic law recognizes such weddings as marriage with a pregnant bride.⁹ Daughters who fall pregnant without marriage are considered to have dishonored the dignity and self-worth of the family. In the Bugis culture, daughters who become pregnant outside of marriage are seen as bringing shame to the family's honor."¹⁰ Pregnancy outside of marriage often leads parents to marry off their child to avoid shame. Article 7, paragraph (2) of Law No. 16 of 2019 on Amendments to the Marriage Law regulates marriage dispensation for females under 19 years old and males under 21 years old. Parents seeking dispensation for a couple who have conceived a child before marriage must request an exemption from the court.

The Marriage Act of 1974 addressed the establishment of a minimum marriage age for minors, which was 16 years for women. These age limits were designed to protect children's rights, prevent early marriage, enhance the quality of marriage, and strengthen the family unit. However, the minimum marriage age in Indonesia has undergone changes, allowing girls to continue their education. Article 7 (1) of Constitutional Court Decision No. 22/Law-XV/2017 declared the phrase '16 (sixteen) years' unconstitutional and unenforceable. The court reasoned that 16 is a child's formative age for education and development, and the minimum marriage age for both sexes should be standardized at 19 years. This change was subsequently enacted in Law No. 16 of 2019, amending Law No. 1 of 1974 on Marriage.

Indonesia aimed to achieve a child marriage-free year in 2023. The decrease in juvenile marriage rates is indicative of this objective, dropping from 10.35% in 2021 to 9.23% in 2022.¹¹ However, in 2023, the United Nations Children's Fund (UNICEF) noted that Indonesia ranked fourth globally, with an estimated 25.53 million married girls. The substantial volume of marriage dispensation applications in Indonesia indicates the implications of the 2019 Marriage Act, which raised the minimum marriage age, may not be effectively deterring child marriage. In 2020, religious courts received 63,382 dispensation applications, with a 97% approval rate. Worryingly, 60% of these applications were for children under 18.

Marriage dispensation is a sort of exemption provided by marriage legislation, as determined by religious court authorities, concerning the status of prospective brides who have not attained the legal marriage age according to Article 7 paragraph (2) of legislation

⁹ Sri Adinda Pertiwi, Abdul Wahid Haddade, and Nur Aisyah, "Peran Penghulu Dalam Menentukan Hak Kewalian Atas Anak Perempuan Akibat Kehamilan Diluar Perkawinan ; Studi Kasus Di KUA Kecamatan Mariso Kota Makassar The Role of the Ruler in Determining the Guardianship Rights of Girls Due to Pregnancy Outside of Wedlo" 05, no. 1 (2024), <https://doi.org/10.24252/shautuna.v5i1.35739>.

¹⁰ Helvira, Sufirman Rahman, and Ahyuni Yunus, "Perkawinan Anak Dibawah Umur Sebagai Upaya Menutup Malu (Massampo Siri') Akibat Hamil Diluar Nikah," *Journal of Lex Theory* 1, no. 6 (2020): 116-28.

¹¹ Yoesep Budianto, "Tingginya Angka Perkawinan Usia Anak Di Indonesia," *kompas.com*, 2024, <https://www.kompas.id/baca/riset/2024/03/08/tingginya-angka-perkawinan-usia-anak-di-indonesia>.

No. 16 of 2019. The parents submitted an application for a marriage dispensation to the religious court for urgent reasons, supported by proof necessitating the early conclusion of the marriage. The date of filing the marriage dispensation is indicated by the Directorate-General of the Religious Justice Authority in the following table:

Table 2. Number of Applications for Dispensation of Child Marriage Throughout Indonesia

No	Year	Application	Rulling	Percentage
1	2020	52.095	50.748	97.41%
2	2021	62.219	61.449	98.76%
3	2022	64.222	63.380	98.69%

Source: Subdirectorate of Statistics and Documentation of the Directorate of Administrative Development for Religious Courts, 2024

Based on the above data, the percentage of approvals for excluding child marriages from 2020 to 2021 reached 97%. There are many reasons for his decision to end his marriage. Rafika Guslaili ¹² In her research, she mentioned that at the time of the COVID-19 pandemic in the Peudada-Aceh region, the number of child marriages was also quite high. The causes are excessive use of technology, low educational levels, children's consent to marriage, and local culture. As of 2023, West Nusa Tenggara province led the nation with a staggering 17.32% child marriage rate, followed by South Sumatra (11.41%) and West Kalimantan (11.29%).¹³

Notwithstanding the presence of legal statutes regulating child marriage in Indonesia, particularly within the Child Protection Act and the Marriage Law, enforcement remains a challenge, as evidenced by the continued prevalence of the practice in various regions. Data from the Central Statistical Agency of Indonesia (BPS) and UNICEF for 2020 list some of the provinces exhibiting the greatest incidence of child marriages. ¹⁴ Southeast West Nusa (NTB): 25,4%, Southeast Sulawesi : 24,8%, Eastern Kalimantan: 23,6%, Gorontalo : 23,5 %, Central Sulawesi: 22,8%. The data showed that provinces in eastern and central Indonesia witnessed a high percentage of child marriages.

According to information from the Indonesian Religious Court (the Organizing Body of the Administration of the State Religious Office/BAPENAS), ¹⁵ The provinces exhibiting the greatest volume of marriage dispensation petitions for minors in 2022 are; West Java: 12,407, East Java: 11,205, Central Java: 10,648, Central Java: 10,648, South East West Nusa: 5.461. Among these five consistently ranked top provinces for child marriage dispensation

¹² G Rafika and A Teuku Yudi, "Perkawinan Anak Pada Masa Pandemi," *Perkawinan Anak Pada Masa Pandemi* 2, no. 1 (2024): 1-11, <https://doi.org/https://journal.lps2h.com/cendekia/article/view/11>.

¹³ United Nations Children's Fund, "Perkawinan Anak Di Indonesia," *UNICEF Idonesia*, 2020, 1, <https://www.unicef.org/indonesia/media/2826/file/Perkawinan-Anak-Factsheet-2020.pdf>.

¹⁴ BPS 2022, "Catalog: 1101001," *Statistik Indonesia 2023* 1101001 (2023): 790, <https://www.bps.go.id/publication/2020/04/29/e9011b3155d45d70823c141f/statistik-indonesia-2020.html>.

¹⁵ Fahadil Amin Al Hasan and Deni Kamaluddin Yusup, "DISPENSASI KAWIN DALAM SISTEM HUKUM INDONESIA: Menjamin Kepentingan Terbaik Anak Melalui Putusan Hakim," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 1 (2021): 86, <https://doi.org/10.14421/ahwal.2021.14107>.

applications, 40.98% were granted due to pregnancy (or because of pregnancy/on the grounds of pregnancy).¹⁶

A significant number of parents are applying for child marriage dispensations for reasons such as easing the family's economic burden or preventing perceived adultery. Despite changes to the Marriage Act in 2019 aimed at reducing child marriage, the practice persists due to parental pressure on children to stay married. Therefore, this article proposes imposing criminal sanctions on parents who irresponsibly seek marriage dispensations for their children. Criminal sanctions are a crucial tool to address child marriage in Indonesia by deterring irresponsible dispensation requests and protecting children from its harmful consequences. Implementing effective criminal sanctions requires strong enforcement mechanisms, increased awareness, and a cultural and religious-sensitive approach to ensure both the well-being of children and legal certainty.

This article also talks about child marriages in the Philippines. The Philippines has a total of 865,800 15-year-old marriages, and 5.5 million children under the age of 18 marry minors.¹⁷ Some communities in the Philippines have cultures and traditions that support child marriage. In certain instances, early marriage is perceived as a means to safeguard the honor of families and their daughters. The Philippines has recorded cases of 865,800 children under the age of 15 and 5.5 million children under 18 who have underage marriages. Unlike Indonesia, some communities in the Philippines have cultures and traditions that support child marriage. In some cases, early marriage is seen as a way to protect the honour of families and daughters. The Filipino Muslim community is located in the territory of the five western provinces of Mindanao consisting of Maguindanao, Lanao del Sur, Basilan, Sulu and Tawi-Tawi. The Muslim community in the Philippines is subject to the provisions of the Muslim Personal Law Code, which is a result of the codification of family law applicable to Filipino Muslims and seeks to enforce Muslim civil law among Muslims in the country. There are two statutes in the Philippines that establish the legal marriage age. The first is governed by the Philippine Family Code, authorized by Executive Order No. 209, and the second by the Muslim Personal Law Code, enacted by Presidential Decree No. 1087. The Philippines has a minimum marriage age. However, the age requirements under these two regulations are considerably different. The Muslim Personal Law Code's provisions require a minimum age of 15 years for boys and 12 years for girls who have attained puberty. In contrast, the Philippine Family Code establishes a minimum marriage age of 18 years for both men and women.¹⁸

Indonesia and the Philippines continue to make changes to the marriage age for children. Early marriages are basically not good for children. Young brides are more susceptible to domestic abuse compared to women who marry in adulthood, and they encounter

¹⁶ "Pernikahan Anak Di Indonesia 'Mengkhawatirkan', Permohonan Dispensasi Ke Pengadilan Agama Naik 200%," *bbcindonesia*, 2023, <https://www.bbc.com/indonesia/articles/c72y6xwx5dvo>.

¹⁷ Shafa Diva Kinanti and Adhi Cahya Fahadayna, "Studi Komparatif Pengaruh Docm Terhadap Kasus Pernikahan Dini Di Indonesia Dan Filipina," *Action Research Literate* 8, no. 3 (2024): 386–92, <https://doi.org/10.46799/ar1.v8i3.238>.

¹⁸ JM. Muslimin and Rahmatul Ummah, "Differences in Muslim and National Laws on Minimum Age Restrictions for Marriage in the Philippines," no. 209 (2022), <https://doi.org/10.4108/eai.20-10-2021.2316347>.

significant health risks, including mortality, due to early and tightly spaced births.¹⁹ Child marriage is intimately linked to sexual assault and exploitation.²⁰ Most victims of sexual assault are women. In child marriage, the party of immature age might be either male or female. So, child marriage can happen but will not sexual assault is not often a primary subject in homes. Domestic violence is mostly the result of physical and psychological aggression. Domestic sexual assault does not usually lead to child marriage.²¹ Girls who marry as children often face sexual assault due to their unwillingness to have sexual intercourse with their husbands. Girls are obligated to serve their husbands under all conditions.²² For cultural and religious reasons, women usually have to obey their husbands' orders. If his will is not fulfilled, then the husband can be an abusive partner retains survivors within the relationship. The interior of the wheel signifies nuanced, ongoing activities throughout time, but the outer ring denotes physical and sexual assault.

Adolescent girls, especially in early adolescence, are more vulnerable to the health hazards associated with pregnancy and childbirth due to their bodies potentially lacking physical readiness. Obstetric fistula, eclampsia, puerperal endometritis, and systemic infections represent some serious conditions that patients may encounter both in the short and long term. Worldwide, maternal illnesses are among the primary contributors to disability-adjusted life years and death in females aged 15 to 19.²³ In addition to health problems, early marriage frequently reduces girls' educational opportunities, restricting their ability to achieve economic independence and prolonging cycles of poverty. Research indicates that girls who married at a young age are more prone to discontinuing their education, which has a substantial impact on their future earning potential and socioeconomic status. This educational interruption exacerbates gender inequities by making young girls less likely to acquire the skills and knowledge required to fully engage in the workforce. Efforts to raise the minimum marriage age in Indonesia and the Philippines demonstrate a growing awareness of these challenges. These nations seek to align national legislation with international standards to safeguard the rights and health of young girls, thereby facilitating their educational attainment.

3.2. Gaps on Prevalence Indonesian Regulation of Child Marriage

All across the world, child marriage is a societal issue that arises. Within the theory of structural functionalism, a society is viewed as a system comprised of various interrelated

¹⁹ Heather Barr, "Signs of Hope in Fight Against Child Marriage," hrw.org, 2021, <https://www.hrw.org/news/2021/06/14/signs-hope-fight-against-child-marriage#:~:text=Human Rights Watch opposes all marriage of children,marry%2C the vast majority of whom are girls.>

²⁰ E. J. Revkin, M. R., & Wood, "The Islamic State's Pattern of Sexual Violence: Ideology and Institutions, Policies and Practices.," *Journal of Global Security Studies* 6, no. 2 (2021).

²¹ Sudirman et al., "Examining the Complexity of Child Marriage as Sexual Violence in the Digital Era," *Legality: Jurnal Ilmiah Hukum* 31, no. 2 (2023): 310-28, <https://doi.org/10.22219/ljih.v31i2.28881>.

²² Farhah Kamilah and Elsy Maria Rosa, "Sexual Experiences of Girls Engaged in Child Marriage: A Review of Qualitative," *Jurnal Kedokteran Dan Kesehatan Indonesia* 12, no. 1 (2021): 79-91, <https://doi.org/10.20885/jkki.vol12.iss1.art12>.

²³ "Early Childbearing Can Have Severe Consequences for Adolescent Girls," UNICEF, 2024, <https://data.unicef.org/topic/child-health/adolescent-health/>.

elements that function to maintain stability and balance. Talcott Parsons, in his Structural Functional Theory, identifies human problems as follows:²⁴

Society grows and evolves from a simple society to a complex one. The growth and development of society proceed slowly or evolutionarily. While social institutions increase in number, the relationship between them remains relatively unchanged because all institutions are thought to evolve from a common source. Similar to biological organisms, social systems have their own component systems (subsystems) that, to some extent, function independently. Talcott Parsons's theory of structural functionalism provides an understanding that societies are dynamic and integrated systems. This integration is awakened through processes of adjustment, consensus of values, and gradual change.

In the context of child marriage, gender inequality theory explains why the majority of victims are girls. In the control of sexuality, girls are married off early to protect family honor (shame and honor). The virginity and sexual choices of girls are considered the property of the family or husband. Gender equality refers to the equal position of men and women in terms of access, participation, control, and benefits in various life activities, both within the family and in society. Gender disparity often favors women in comparison to similarly positioned males. Women frequently receive inferior compensation for identical or equal labor and often face obstacles in their progression, particularly to higher positions. There is often a disparity in the distribution of household chores and childcare responsibilities between a lady and her husband, even when both engage in equivalent amounts of paid employment outside the home. When female professionals are paired with male counterparts of equivalent productivity, males continue to receive recommendations for their work and ascend career ladders more rapidly. Overall, gender inequality signifies that occupations predominantly performed by women, such as teaching young children and nursing, are compensated less than those mostly undertaken by males, such as construction and mining. Gender inequality may manifest as females receiving worse educational opportunities. Among guys of identical social class.²⁵

Marriage legislation is crucial in preserving social order, protecting the rights of every individual, and ensuring that marriages lead to the formation of responsible families. Marriage law in Indonesia is governed by the Marriage Act No. 1 of 1974, which regulates the various aspects of marriage, Including the age criteria for each potential bride and groom, consent to marry, ownership of property, and divorce proceedings. The Marriage Act is designed to ensure that marriages are conducted freely and responsibly, with due consideration for the rights and obligations of all parties involved.

It is widely accepted that Marrying girls before to the age of 18 constitutes a violation of their human rights. Several international legal treaties have examined child marriage. Child marriage violates interconnected rights such as equality based on gender and age,

²⁴ Akhmad Rizqi Turama, "Formulasi Teori Fungsionalisme Struktural Talcott Parsons," *Journal System UNPAM* 15, no. 1 (2016): 165–75, <https://core.ac.uk/download/pdf/196255896.pdf>.

²⁵ Judith Lorber and Allen Park, *Gender Inequality*, 2010.

consent to marriage and family formation, the right to life, health, education, and freedom from slavery.²⁶

Article 7 of Act No. 16 of 2019 on Amendments to Law No. 1 of 1974²⁷ on Marriage regulates deviations from the age requirement stated in paragraph (1). It mentions that the parents of the male and/or female may apply for dispensation to the court on very urgent grounds, accompanied by sufficient supporting evidence, to marry a child who is not sufficiently old for marriage. This dispensation clause ultimately results in a disharmonization of legislation because judges can grant exemptions based on subjective criteria put forward by the parents, often citing urgency due to the prospective bride being pregnant outside of marriage. This can create legal uncertainty and provide room for abuse of authority, as well as reduce the effectiveness of child protection, given that criteria for urgent circumstances may vary depending on the individual judgment of the judge. Consequently, the primary objective of protecting children from early marriage and its adverse impacts may not be achieved due to the existence of this derogation clause or the filing of a child marriage waiver.

Granting marriage dispensations that are not in accordance with child protection principles can also violate the Child Protection Act. It seeks to provide maximum safeguarding of children from all manifestations of violence, exploitation, and prejudice. The exemption may result in a minor marriage, potentially detrimental to the child's rights to health, education, and psychological development. Underage marriages in Indonesia can still take place with permission under the Marriage Act, even if they are below the legal age limit. Juridically, the controversy surrounding minor marriage in Indonesia is further complicated by the different age definitions for "child" across various laws. For instance, Article 1 of Act No. 1 of 1974 sets a minimum age limit for marriage, while Act No. 35 of 2014 (Amendment of Law No. 23 of 2002 on Child Protection) defines a child as someone under 18 and obligates parents to prevent early marriage.²⁸ Despite the government's presence imposed minimum limits on marriage, in rural areas, child marriage still occurs. The law has become ineffective due to the existence of a dispensation for child marriage. If the religious court rejects the application for the dispensation of a child's marriage, then the parents, according to their religious beliefs and traditions, will carry out the marriage of the child through an unregistered marriage (sirri marriage).²⁹

Despite the government's actions, A Sirri marriage is conducted in a private manner and is not documented with the Office of Religious Affairs. Nevertheless, the community persists in hosting a wedding reception to honor the union "as if." The registration had been duly completed with the Religious Affairs Office. A wedding ceremony serves to

²⁶ Elisa Scolaro et al., "Child Marriage Legislation in the Asia-Pacific Region," *Review of Faith and International Affairs* 13, no. 3 (2015): 23–31, <https://doi.org/10.1080/15570274.2015.1075759>.

²⁷ Kementrian Sekretariat Negara RI, "Undang-Undang Republik Indonesia No 16 Tahun 2019 Tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Undang-Undang Republik Indonesia*, no. 006265 (2019): 2–6.

²⁸ Soetomo Ramelan, *Pembaharuan Hukum, Jurnal Hukum & Pembangunan*, vol. 7, 2017, <https://doi.org/10.21143/jhp.vol7.no1.638>.

²⁹ Aan Asgari Rahman, "The Effectiveness of Marriage Dispensation Requests at the Religious Court of Palu Dispensation to Marry Is a Dispensation Granted by the Religious Court to a Bride and Groom Who Are Not Old Enough to Enter into Marriage for a Man and Woman Who Have Not R" 5, no. 1 (2024): 23–33.

validate that the union is recognized as legal, formal, and duly documented with the appropriate religious authorities.³⁰ Marriage is a legal union according to Islamic Shariah but is not registered in the civil registry. A person who engages in such a marriage should not be deemed to have committed a criminal act that warrants legal sanction. Those who enter into these marriages understand that the marriage has no legal force because it is unregistered. The function of marriage registration in the civil registration agency is to provide proof that someone is actually married. One of the pieces of evidence that is considered valid as proof of marriage is the official document issued by the state."³¹

Marriage has a variety of negative consequences. The legal factors significantly influence the wife's sentiments and future. There are several losses that the woman may experience if the marriage is not legally recognized. The wife will also experience social and economic consequences. Unregistered marriages are not legally recognized by the state, and this impacts the legal standing of any children born. A wife will not inherit from her husband's estate, nor will a child inherit from their father. A child born outside of a legal marriage has no civil relationship with their father, but only with their mother and her family. This clause is based on Article 43 of the Marriage Act."³²

Unregistered marriage has a number of negative consequences, including legal losses for the wife. Wives will also suffer social and economic impacts. Legally, the marriage is not recognized by the state, which also affects the legal status of the child born. A wife is not entitled to alimony or inheritance, and if her husband dies, she shall not inherit from him. A child born outside of a legal marriage has no civil contact with his father but rather with his mother and her family. This rule is based on Article 43 of the Marriage Act, which says that a kid born out of marriage must have civil contacts with his mother and her family. Islamic law stipulates that a child's parentage may alone be established by a birth certificate or alternative forms of evidence. Without such evidence, the father-child relationship cannot be legally established.

3.3. Gaps on Prevalence Philippines Regulation of Child Marriage

The Philippines' Presidential Decree No. 1083, enacted in 1977, is known as the Code of Muslim Personal Laws (CMPL). It recognizes Sharia (Islamic law) as part of the legal system in the Philippines for matters related to Muslim personal laws, including marriage, divorce, inheritance, and guardianship.

The CMPL established Sharia courts to handle these cases and appointed qualified Muslim judges to administer the code. The CMPL is landmark legislation that acknowledges the distinct legal identity of Filipino Muslims. It aims to address historical grievances and promote inclusivity in the Philippine legal system.

Presidential Decree No. 1083 (Code of Muslim Personal Laws, CMPL) is a controversial topic because it allows exceptions to the minimum age of marriage enshrined in the

³⁰ Anwar Hafidzi et al., "Sirri Marriage Celebration and Its Impact on Social Change in Banjarese Community, South Kalimantan," *Al-Ahkam* 32, no. 2 (2022): 153-68, <https://doi.org/10.21580/ahkam.2022.32.2.12789>.

³¹ Nursalam Rahmatullah, "Atas Nikah Sirri Dan Nikah Anak Di Bawa Usia Perspektif Hukum Islam)," *Jurnal Hukum Keluarga* 2, no. 2 (2021): 137-64.

³² Zuhrah Fatimah, "PROBLEMATIKA NIKAH SIRRI DI INDONESIA" 1, no. 1 (1974): 303-35.

national Civil Code. The breakdown of the CMPL and child marriage highlights this conflict. National Law vs. CMPL: The Philippines has a minimum age of marriage of 18 under the Civil Code. However, the CMPL allows exceptions for Muslims to marry below 18 with parental consent and court approval (Article 36 of the Family Code). These exceptions create loopholes that can be exploited to justify child marriages, leaving a gap in national efforts to end the practice. Perpetuating Child Marriage: Even with exceptions, the recognition of child marriage within the CMPL can normalize the practice within Muslim communities. Variations concerning the administration of marriage in the amendments to the marriage legislation in Indonesia, the researcher found that in Section 34, the age requirement for marriage was regulated. No marriage shall be solemnized between any party below the age of eighteen years without parental authority or court consent, as hereinafter provided. (This is the national minimum age requirement established in the Civil Code.) In the context of Presidential Decree No. 1083 (Code of Muslim Personal Laws, CMPL), the phrase "court consent, as hereinafter provided" refers to the permission granted by a court of law to allow a marriage between individuals who have not yet reached the minimum age of marriage, which is 18 years old in the Philippines. This provision is specifically intended for Muslims, as the CMPL recognizes Sharia law in matters related to personal status, including marriage. Sharia law allows for marriage below the national minimum age under certain circumstances, such as: Parental or guardian consent is required for any marriage involving minors under Sharia law. In exceptional cases, a court may grant permission for marriage below the minimum age if it deems it in the best interests of the parties involved. In the process of obtaining court consent for a marriage below the minimum age, the parties involved must file a petition with the appropriate court. The court will then conduct a hearing to assess the situation and determine whether to grant the petition. Factors considered by the court may include: Ages of the parties: The court will consider the maturity and understanding of the parties involved. The court will verify that the parties' parents or guardians have given their consent to the marriage. The court will assess the reasons provided by the parties for seeking permission to marry below the minimum age. The court will ultimately determine whether granting the petition is in the best interests of the parties involved. The "court consent" provision has been a subject of debate and criticism, particularly among those who advocate for children's rights and gender equality. Critics argue that the provision creates loopholes that can perpetuate child marriage and undermine efforts to protect girls from early and forced marriages. The researcher's opinion is that the "court consent" provision in the CMPL reflects the Philippines has a complex interaction of religious and legal frameworks. While it aims to accommodate certain cultural practices, it also raises concerns about protecting the rights and well-being of minors. Ongoing discussions and efforts to address child marriage are crucial to ensuring that all children are able to reach their full potential and make informed choices about their future.

This condition can be a Further Challenges Undermine National Law: The CMPL can be seen as contradicting the national goal of ending child marriage. especially on gender inequality: Child marriage disproportionately affects girls, limiting their opportunities and education. This gap can be Potential for Conflict: The CMPL's stance on child marriage clashes with recent legislation like Republic Act 11596, which criminalizes child marriage without exceptions. The CMPL is a complex piece of legislation with both positive and negative aspects. While it recognizes the distinct legal identity of Filipino Muslims, the child marriage exceptions remain a point of contention.

Research indicates that child marriage is widely tolerated in The Bangsamoro Autonomous Region in Muslim Mindanao (BARMM), despite the stigma and bullying faced by married adolescent girls. BARMM has a primarily Muslim population that follows its own set of regulations, heavily inspired by Islam. In the Philippines, the minimum age for marriage is 18. The incidence of child marriage in BARMM is unknown due to incomplete reporting and registration. According to the Health Survey, the median age for first marriage is 22.5 years in the Philippines and somewhat lower at 20.8 years in BARMM. There is no systematic data collection on child marriage prevalence in the BARMM region, despite reports that 2% of women marry before age 15 and 15% by age 18. Child marriage traditions in the region disproportionately affect girls, who face physical and psychological abuse, which is further compounded by war and relocation. Similarly, relocation poses distinct obstacles and hazards. In BARMM, marriage is typically governed under presidential decree 1083.³³

Child Marriage as a Culture It is difficult to modify since it alludes to Muslim men and women being married at a young age. Anwar Emblawa, a Muslim leader in Shariff Aguak, Maguindanao, said that in Islam, women were permitted to marry after they reached adolescence. In Islam, there is no specified age for girls to marry. As long as a female reaches puberty, she and her spouse can marry.

In November 2015, during the deliberation of the proposed legislation, a fatwa, or official legal opinion, authored by Abuhuraira Udasan, mufti of the Dar-al-ifta Bangsamoro, received endorsement, explaining the concerns of early and forced marriage in the framework of Islam.³⁴

3.4. The Enforcement of Criminal Sanctions in Child Marriage

Child marriage in the Philippines is a complicated societal problem with several contributing variables. Poverty, a lack of educational opportunities, and gender discrimination are among them. Furthermore, the existence of Islamic-based norms, such as those detailed in the Code of Muslim Personal Laws (CMPL), might provide loopholes that allow for child marriage in some instances.

Notwithstanding these obstacles, the Philippine government has undertaken significant initiatives to address child marriage. Republic Act No. 11596, or the "Prohibition of Child Marriage Law," was signed into law in 2022. This groundbreaking legislation makes child marriage illegal, regardless of religion or cultural background. However, attempts to eliminate child marriage go beyond legislative improvements. Government activities also aim to change societal norms through education and awareness campaigns.

³³ GOOLMAN GOOD, "Our Voices, Our Future : Understanding Risk and Adaptive Capacities to Prevent and Respond to Child Marriage in the Bangsamoro Autonomous Region in Muslim Mindanao," *Angewandte Chemie International Edition*, 6(11), 951–952., vol. 1, 2015.

³⁴ Rufa Cagoco-Guiam, "Enforcing the Law Against Child Marriage," *Hurights.or.jp* 108 (n.d.), <https://www.hurights.or.jp/archives/focus/section3/2022/06/enforcing-the-law-against-child-marriage.html>.

Mohan A.K³⁵ said it was determined that community and culture significantly impact the decisions of youth regarding marriage. However, they must also comprehend what is advantageous for themselves and future generations. This doesn't mean abandoning traditions altogether. Instead, fostering open dialogue within families and communities can create space for young people to understand the positive aspects of their heritage while also considering the evolving needs of society and the importance of individual choice.

The Indonesian government has undertaken efforts to prevent child marriages. Notably, Article 26, paragraph 1 of the Child Protection Act No. 35 of 2014³⁶ (amending Law No. 23 of 2002) places an obligation on parents to prevent child marriage. Indonesia has demonstrated its commitment to combating child marriage through various efforts, continuing to utilize existing laws and regulations to prevent and address this issue.

In upholding the fundamental principles of protecting children's rights as individuals and respecting their human dignity, the state must guarantee legal protection and demonstrate an effective justice response to prevent child marriage. To effectively address this issue, the state must strengthen existing policies and develop new support systems. This comprehensive approach will ensure the most impactful enforcement of laws against child marriage. Indonesia takes a multi-pronged approach to deterring child marriage through criminal sanctions.

Indonesia has a number of regulations that regulate criminal sanctions for perpetrators of child marriage. Here are some important points: first, Child Protection Act: The main path to setting criminal sanctions for child marriage;

- a. Article 73: Prohibition of child marriage (under 18 years old).
- b. Article 76: Sanctions for those who violate this prohibition: maximum incarceration of 6 months and a fine of Rs 10,000,000.
- c. Article 81: Punishment for a parent who marries or forces a child to marry: maximum incarceration of 6 months and a fine of Rs 10,000,000.
- d. Article 82: Sanctions for marriage registrars who register children's marriages: maximum incarceration of 6 months and a fine of Rs 10,000,000.

Second, The Sexual Violence Criminal Procedure Act (STCW) gives tougher penalties, taking into account the age of perpetrators and children:

- a. Article 13: Adult perpetrators marrying children under the age of 15: maximum imprisonment of 9 years and a fine of Rs. 200,000,000.

³⁵ Mohan A.K and Gangotri Dash, "Perception of Youth on Marriage Practices: A Study in Dodda Birana Kuppe Gram Panchayat, H D Kote Taluk, Mysuru District," *International Journal of Research -GRANTHAALAYAH* 4, no. 3 (2016): 42-52, <https://doi.org/10.29121/granthaalayah.v4.i3.2016.2785>.

³⁶ Republik Indonesia, "Undang - Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang - Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak," UU Perlindungan Anak § (2014), <https://peraturan.bpk.go.id/Home/Details/38723/uu-no-35-tahun-2014>.

- b. Article 14: Adult perpetrators marrying 15–18-year-olds: maximum imprisonment of 15 years and a fine of Rs. 300,000,000.

Third, strengthening sanctions through government regulations (PP) and ministerial regulations (PMA): PP No. 72 of 2021 and PMA No. 19 of 2021: These regulations aim to strengthen sanctions for violating procedures and registration requirements for child marriage, aligning them with the Child Protection Act.

Article 288 of the Code of Criminal Law states that (1) Whoever is married to a woman whom he knows or should know shall be charged with imprisonment for a term not exceeding four years. (2) If he is seriously injured, He shall get a sentence of up to eight years' jail. 3) If it results in death, the penalty of imprisonment falls to a maximum of twelve years. "Whoever commits adultery with a man, knowing, or supposedly pretending, that he is not fifteen years old, or, if his age is unknown, that it is not time for him to marry." Article 288 of this article is related to injuries that resulted in death. If described, it could result in a child marriage. The perpetrator cannot be criminalized if the injury caused does not result in death. In the second paragraph of Article 290, it is stated that the perpetrator of a juvenile marriage or of marrying a female who has not yet reached the age of 15 is considered an act of adultery and is subject to a maximum sentence of seven years.

According to Article 26, paragraph 1 of the Child Protection Act, parents have the obligation and responsibility to: (a) provide for, cultivate, instruct, and protect youngsters; (b) cultivate children in line with their skills, aptitude and enthusiasm; and (c) prohibit children from marrying while they are under age.

It may be found in Section 1446 of the Book of the Law of the Convention, which states that "any union made by an underage child or by a person under authority is void by law, and any claim made by or by them shall be void, solely on the grounds of immaturity or discharge."

Child marriage based on a request for a discharge, although permitted under certain circumstances, is not a permanent solution to the problem of marriage due to an extramarital pregnancy. While dispensation for child marriage may be granted in certain situations, it should not be viewed as a primary or long-term solution to address the broader issues surrounding premarital pregnancy and underage marriages. It underscores the need for comprehensive approaches that focus on preventing child marriage, providing support to couples facing premarital pregnancy, and promoting responsible sexual and reproductive health methodologies. The process of dispensing child marriage must be carried out with the utmost care and careful consideration of the possibility of coercion from the parents, as well as ensuring that consent given by the child is based on free will and without pressure. The judge, in his judgment, naturally gave priority to children who were forced into early marriage due to pregnancy. Religious, cultural, and future considerations of the conceived child are indeed the basis for the granting of the marriage dispensation.³⁷

³⁷ A.K and Dash, "Perception of Youth on Marriage Practices: A Study in Dodda Birana Kuppe Gram Panchayat, H D Kote Taluk, Mysuru District."

The relationship between child marriage dispensation and criminalization is complex and deserves careful investigation. While dispensation may address unique circumstances, it must not overshadow the overarching purpose of ending child marriage. To successfully combat child marriage in Indonesia, a multifaceted approach that promotes prevention, enforcement, victim care, and critical examination of dispensation provisions is required. The dispensation of child marriage, a legal mechanism allowing marriages under specific circumstances (as outlined in Article 7 of Law No. 1 of 1974 on Marriage), has added another layer of complexity to the already intricate landscape of child marriage in Indonesia. This dispensation is a double-edged sword. While the intention behind it is to provide a regulated pathway for unavoidable child marriages, it has also raised concerns about its potential to undermine efforts to combat child marriage. The researcher give an Critics argue that dispensation may inadvertently normalize child marriage, sending a message that it is an acceptable practice under certain conditions. They fear that this could weaken societal resistance to child marriage and hinder efforts to raise the legal minimum marriage age.

Child marriage remains a prevalent global concern, with Indonesia and the Philippines facing distinct challenges in addressing this issue. While Indonesia has implemented a system of dispensation, allowing child marriage under specific circumstances, the Philippines has taken a bolder step by enacting a comprehensive ban on child marriage. Building on this commitment, the Philippines enacted Republic Act No. 11525, also known as the "Kabataan 21" law, which took effect in January 2022. This law prohibits child marriage and imposes stricter penalties on those who engage in or facilitate it. The Philippines' ban on child marriage represents a significant step forward in the country's fight against this harmful practice. It sends a clear message that child marriage is unacceptable and reinforces the commitment to protecting children's rights and well-being.

The Philippines sets the legal age for marriage at 18 years, and if it is under that age, it is classified as child marriage. The Republic Act 11596 clearly provides punishments for those individuals who engage in child marriage. Section 6 of Republic Act 11596 clearly states that child marriage in the Philippines is void. Republic Act 11596 is the primary regulation that provides punishment for child marriage violations in the Philippines.³⁸ The following provisions define the acts that are punishable under Republic Act 11596:

- a. Section 4 Paragraph A provides penalties for the facilitation of child marriage.
- b. Section 4 Paragraph B provides a penalty for the solemnization of child marriage.
- c. Section 4 Paragraph C provides a penalty for the cohabitation of an adult with a minor outside of marriage.
- d. Republic Act 11596 outlines penalties for violating the prohibited acts within the law. These provisions are as follows:
 1. Under Section 4 Paragraph A, facilitating child marriage is punishable by imprisonment for eight (8) years and one (1) day to ten (10) years and a fine of not less than forty thousand (40,000) pesos. If the facilitator is the child's parent, ascendant,

³⁸ "REPUBLIC ACT NO. 11596, December 10, 2021] AN ACT PROHIBITING THE PRACTICE OF CHILD MARRIAGE AND IMPOSING PENALTIES FOR VIOLATIONS THEREOF," The LawPhil Project, 2021, https://lawphil.net/statutes/repacts/ra2021/ra_11596_2021.html.

adoptive parent, stepparent, or guardian, the penalty increases to imprisonment for ten (10) years and one (1) day to twelve (12) years and a fine of not less than fifty thousand (50,000) pesos, along with perpetual loss of parental authority. Public officials that enable child marriage are subject to termination from their positions and lifelong disqualification from public office.

2. Section 4 Paragraph B states that anyone who solemnizes a child marriage faces imprisonment for ten (10) years and one (1) day to twelve (12) years and a fine of not less than fifty thousand (50,000) pesos. Public officers who solemnize child marriage face dismissal from service and perpetual disqualification from holding office.
3. Under Section 5 Paragraph C, an adult person cohabiting with a child outside of wedlock faces imprisonment for ten (10) years and one (1) day to twelve (12) years and a fine of not less than fifty thousand (50,000) pesos. If the offender a public officer may encounter termination from duty and permanent prohibition from holding office.

The violation of Republic Act 11596 is considered a criminal offense or violation under Philippine law. According to Act 3815, or the Revised Penal Code of the Philippines, there are three main classifications of crimes under Philippine law as to commission or violation. The first one is "felony," which is a violation of the provisions of Act 3815, or the Revised Penal Code of the Philippines. The second one is "criminal offenses or violations," which are acts committed or omitted against special penal laws or special regulations. The third one is "infractions," which are acts committed or omitted under local governmental rules, laws, or regulations. The crime under Republic Act 11596 was classified under "Criminal Offense/Violation" since it is an act punishable under a special penal law or a special regulation.

While PD 1083 might have unintentionally created a loophole for child marriage, the Kabataan 21 Law represents the Philippines' current stance against the practice. The government's assistance focuses on prevention and support services under the framework of the Kabataan 21 Law. The relationship between Philippine Presidential Decree No. 1083 (Code of Muslim Personal Laws) and the government's assistance in handling child marriages is complex. Enacted in 1977, Presidential Decree No. 1083 (PD 1083) recognizes Sharia law for Filipino Muslims on personal matters such as marriage and divorce.³⁹ A potential issue arises from Article 16, which allows marriage for females upon reaching puberty (generally presumed at 15) or earlier with court permission. This can be seen as a potential loophole for child marriage.

PD 1083 predates the Kabataan 21 Law and potentially contradicts its aim of eliminating child marriage. It's unclear how these two legal instruments interact. The Kabataan 21 Law, being a later and more specific law, might supersede PD 1083 in cases of child marriage. The Philippine government's current approach focuses on preventing child marriage through:

³⁹ The Law Phil Project, "PRESIDENTIAL DECREE No. 1083 A DECREE TO ORDAIN AND PROMULGATE A CODE RECOGNIZING THE SYSTEM OF FILIPINO MUSLIM LAWS, CODIFYING MUSLIM PERSONAL LAWS, AND PROVIDING FOR ITS ADMINISTRATION AND FOR OTHER PURPOSES" (n.d.), https://lawphil.net/statutes/presdecs/pd1977/pd_1083_1977.html.

1. Educational campaigns to raise awareness about the negative consequences of child marriage.
2. Addressing the root causes of child marriage, such as poverty and gender inequality,
3. Providing support services for girls at risk of child marriage, such as education and livelihood opportunities.

4. Conclusion

Indonesia and the Philippines have quite different legal approaches to dealing involving child marriage. Indonesia, presently positioned fourth globally, is contending with a significant incidence of child marriages. This issue arises from a confluence of economic deprivation and cultural and religious influences. The increase of child marriage in Indonesia is worrying; although the Marriage Act has been revised, loopholes (like the dispensation process) undermine its effectiveness.

The Philippines, on the other hand, took a significant step with the adoption of the Child Marriage Prohibition Act in 2022. This stricter law imposes criminal sanctions on those who arrange or conduct child marriages, effectively deterring the practice. The author argues that Indonesia needs to adopt its own set of rules, emphasizing criminal sanctions to combat child marriages. Implementing such measures, along with tighter enforcement mechanisms and awareness-raising campaigns, is crucial to ending this dangerous practice.

Eradicating child marriages requires a multifaceted approach that addresses social and cultural factors alongside legal reforms. Ultimately, protecting children's rights and promoting their well-being necessitates a strong legal framework with effective implementation. The absence of criminal sanctions would significantly weaken law enforcement's ability to create an effective barrier to child marriage.

Therefore, Indonesia and the Philippines must continue to adopt a multifaceted approach, addressing social, cultural, and religious factors alongside legislative reforms in their handling of child marriages.

Acknowledgments

I express my gratitude to Prof. Dr. Anak Agung Istri Ari Atu Dewi, SH., MH, a colleague at the Indonesian Association of Lectures and Gender Law Enthusiasts (APPHGI), for granting me the invaluable opportunity to finalize this article, which facilitated my comprehensive research and discourse on the protection of women and children.

References

- A.K, Mohan, and Gangotri Dash. "Perception of Youth on Marriage Practices: A Study in Dodda Birana Kuppe Gram Panchayat, H D Kote Taluk, Mysuru District." *International Journal of Research -GRANTHAALAYAH* 4, no. 3 (2016): 42-52. <https://doi.org/10.29121/granthaalayah.v4.i3.2016.2785>.
- Ahmad Rusyaid Idris. "CONTEMPORARY ISLAMIC LAW IN INDONESIA: THE FULFILLMENT OF CHILD CUSTODY RIGHTS IN DIVORCE CASES CAUSED

- BY EARLY MARRIAGE." *Metro Islamic Law Review* 3, no. 1 (2024): 1–21. <https://doi.org/0.32332/milrev.v3i1.8907>.
- bbcindonesia. "Pernikahan Anak Di Indonesia 'Mengkhawatirkan', Permohonan Dispensasi Ke Pengadilan Agama Naik 200%," 2023. <https://www.bbc.com/indonesia/articles/c72y6xwx5dvo>.
- BPS 2022. "Catalog: 1101001." *Statistik Indonesia 2023* 1101001 (2023): 790. <https://www.bps.go.id/publication/2020/04/29/e9011b3155d45d70823c141f/statistik-indonesia-2020.html>.
- Christian, J Herry, and K Edenela. "Terampasnya Hak-Hak Perempuan Akibat Diskriminasi Batas Usia Perkawinan." *Lex Scientia Law Review* 3, no. 1 (2019): 1–14. <https://journal.unnes.ac.id/sju/index.php/lslr/article/view/30723>.
- GOOD, GOOLMAN. "Our Voices, Our Future: Understanding Risk and Adaptive Capacities to Prevent and Respond to Child Marriage in the Bangsamoro Autonomous Region in Muslim Mindanao." *Angewandte Chemie International Edition*, 6(11), 951–952. Vol. 1, 2015.
- Hafidzi, Anwar, Bahran Bahran, Fuad Luthfi, Rusdiah Rusdiah, Mohd Hatta Mohamed Ali, and Ali Banaeian Esfahani. "Sirri Marriage Celebration and Its Impact on Social Change in Banjarese Community, South Kalimantan." *Al-Ahkam* 32, no. 2 (2022): 153–68. <https://doi.org/10.21580/ahkam.2022.32.2.12789>.
- Hasan, Fahadil Amin Al, and Deni Kamaluddin Yusup. "DISPENSASI KAWIN DALAM SISTEM HUKUM INDONESIA: Menjamin Kepentingan Terbaik Anak Melalui Putusan Hakim." *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 1 (2021): 86. <https://doi.org/10.14421/ahwal.2021.14107>.
- Heather Barr. "Signs of Hope in Fight Against Child Marriage." hrw.org, 2021. <https://www.hrw.org/news/2021/06/14/signs-hope-fight-against-child-marriage#:~:text=Human Rights Watch opposes all marriage of children,marry%2C the vast majority of whom are girls>.
- Helvira, Sufirman Rahman, and Ahyuni Yunus. "Perkawinan Anak Dibawah Umur Sebagai Upaya Menutup Malu (Massampo Siri') Akibat Hamil Diluar Nikah." *Journal of Lex Theory* 1, no. 6 (2020): 116–28.
- Kamilah, Farhah, and Elsy Maria Rosa. "Sexual Experiences of Girls Engaged in Child Marriage: A Review of Qualitative." *Jurnal Kedokteran Dan Kesehatan Indonesia* 12, no. 1 (2021): 79–91. <https://doi.org/10.20885/jkki.vol12.iss1.art12>.
- Kementrian Sekretariat Negara RI. "Undang-Undang Republik Indonesia No 16 Tahun 2019 Tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan." *Undang-Undang Republik Indonesia*, no. 006265 (2019): 2–6.
- Kinanti, Shafa Diva, and Adhi Cahya Fahadayna. "Studi Komparatif Pengaruh Docm Terhadap Kasus Pernikahan Dini Di Indonesia Dan Filipina." *Action Research Literate* 8, no. 3 (2024): 386–92. <https://doi.org/10.46799/ar.v8i3.238>.
- Lee, Kyu Han, Atique Iqbal Chowdhury, Qazi Sadeq Ur Rahman, Solveig A. Cunningham, Shahana Parveen, Sanwarul Bari, Shams El Arifeen, and Emily S. Gurley. "Child Marriage in Rural Bangladesh and Impact on Obstetric Complications and Perinatal Death: Findings from a Health and Demographic Surveillance System." *PLoS ONE* 18, no. 7 July (2023): 16–17. <https://doi.org/10.1371/journal.pone.0288746>.
- Lorber, Judith, and Allen Park. *Gender Inequality*, 2010.
- Muslimin, JM., and Rahmatul Ummah. "Differences in Muslim and National Laws on Minimum Age Restrictions for Marriage in the Philippines," no. 209 (2022). <https://doi.org/10.4108/eai.20-10-2021.2316347>.

- Nnadi, Ine. "Early Marriage: A Gender-Based Violence and A Violation of Women's Human Rights in Nigeria." *Journal of Politics and Law* 7, no. 3 (2014): 35-40. <https://doi.org/10.5539/jpl.v7n3p35>.
- Pertiwi, Sri Adinda, Abdul Wahid Haddade, and Nur Aisyah. "Peran Penghulu Dalam Menentukan Hak Kewalian Atas Anak Perempuan Akibat Kehamilan Diluar Perkawinan ; Studi Kasus Di KUA Kecamatan Mariso Kota Makassar The Role of the Ruler in Determining the Guardianship Rights of Girls Due to Pregnancy Outside of Wedlo" 05, no. 1 (2024). <https://doi.org/10.24252/shautuna.v5i1.35739>.
- Rafika, G, and A Teuku Yudi. "Perkawinan Anak Pada Masa Pandemi." *Perkawinan Anak Pada Masa Pandemi* 2, no. 1 (2024): 1-11. <https://doi.org/https://journal.lps2h.com/cendekia/article/view/11>.
- Rahman, Aan Asgari. "The Effectiveness of Marriage Dispensation Requests at the Religious Court of Palu Dispensation to Marry Is a Dispensation Granted by the Religious Court to a Bride and Groom Who Are Not Old Enough to Enter into Marriage for a Man and Woman Who Have Not R" 5, no. 1 (2024): 23-33.
- Rahmatullah, Nursalam. "Atas Nikah Sirri Dan Nikah Anak Di Bawa Usia Perspektif Hukum Islam)." *Jurnal Hukum Keluarga* 2, no. 2 (2021): 137-64.
- Ramelan, Soetomo. *Pembaharuan Hukum. Jurnal Hukum & Pembangunan*. Vol. 7, 2017. <https://doi.org/10.21143/jhp.vol7.no1.638>.
- Republik Indonesia. Undang - Undang Nomor 35 Tahun 2014 tentang Perubahan Atas Undang - Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak, UU Perlindungan Anak § (2014). <https://peraturan.bpk.go.id/Home/Details/38723/uu-no-35-tahun-2014>.
- Revkin, M. R., & Wood, E. J. "The Islamic State's Pattern of Sexual Violence: Ideology and Institutions, Policies and Practices." *Journal of Global Security Studies* 6, no. 2 (2021).
- Rufa Cagoco-Guiam. "Enforcing the Law Against Child Marriage." *Hurights.or.jp* 108 (n.d.). <https://www.hurights.or.jp/archives/focus/section3/2022/06/enforcing-the-law-against-child-marriage.html>.
- Scolaro, Elisa, Aleksandra Blagojevic, Brigitte Filion, Venkatraman Chandra-Mouli, Lale Say, Joar Svanemyr, and Marleen Temmerman. "Child Marriage Legislation in the Asia-Pacific Region." *Review of Faith and International Affairs* 13, no. 3 (2015): 23-31. <https://doi.org/10.1080/15570274.2015.1075759>.
- Sudirman, Ramadhita, Syabbul Bachri, and Büşra Nur Duran. "Examining the Complexity of Child Marriage as Sexual Violence in the Digital Era." *Legality: Jurnal Ilmiah Hukum* 31, no. 2 (2023): 310-28. <https://doi.org/10.22219/ljih.v31i2.28881>.
- Thalib, Putri Aiman, and Pieter Everhardus Latumeten. "Legal Problems of Minor Marriage in the Perspective of Customary ," 4, no. 7 (2025): 1035-51.
- The Law Phil Project. PRESIDENTIAL DECREE No. 1083 A DECREE TO ORDAIN AND PROMULGATE A CODE RECOGNIZING THE SYSTEM OF FILIPINO MUSLIM LAWS, CODIFYING MUSLIM PERSONAL LAWS, AND PROVIDING FOR ITS ADMINISTRATION AND FOR OTHER PURPOSES (n.d.). https://lawphil.net/statutes/presdecs/pd1977/pd_1083_1977.html.
- The LawPhil Project. "REPUBLIC ACT NO. 11596, December 10, 2021] AN ACT PROHIBITING THE PRACTICE OF CHILD MARRIAGE AND IMPOSING PENALTIES FOR VIOLATIONS THEREOF," 2021. https://lawphil.net/statutes/repacts/ra2021/ra_11596_2021.html.
- Turama, Akhmad Rizqi. "Formulasi Teori Fungsionalisme Struktural Talcott Parsons." *Journal System UNPAM* 15, no. 1 (2016): 165-75.

- <https://core.ac.uk/download/pdf/196255896.pdf>.
- UNICEF. "Child Marriage Is a Violation of Human Rights, but Is All Too Common," 2023. <https://data.unicef.org/topic/child-protection/child-marriage/>.
- UNICEF. "Child Marriage Threatens the Lives, Well-Being and Futures of Girls around the World.," 2023. <https://www.unicef.org/protection/child-marriage>.
- UNICEF. "Early Childbearing Can Have Severe Consequences for Adolescent Girls," 2024. <https://data.unicef.org/topic/child-health/adolescent-health/>.
- United Nations Children's Fund. "Perkawinan Anak Di Indonesia." *UNICEF Indonesia*, 2020, 1. <https://www.unicef.org/indonesia/media/2826/file/Perkawinan-Anak-Factsheet-2020.pdf>.
- Yoesep Budianto. "Tingginya Angka Perkawinan Usia Anak Di Indonesia." *kompas.com*, 2024. <https://www.kompas.id/baca/riset/2024/03/08/tingginya-angka-perkawinan-usia-anak-di-indonesia>.
- Zuhrah Fatimah. "PROBLEMATIKA NIKAH SIRRI DI INDONESIA" 1, no. 1 (1974): 303–35.
- Zulfiani, Z. "Kajian Hukum Terhadap Perkawinan Anak Di Bawah Umur Menurut Undang-Undang Nomor 1 Tahun 1974." *Jurnal Hukum Samudra Keadilan* 12, no. 2 (2017): 211–22.

Laws and Regulations

Law No. 1 of 1974 on Marriage

Law of the Republic of Indonesia Number 23 of 2002 on Child Protection

Law No. 21 of 2007 on the Eradication of the Crime of Trafficking in Persons