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Child Marriage in Malaysia and Indonesia in Legal Anthropology Perspective: Between Local Traditions and Islamic Legal Regulation

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Abstract
Child marriage remains a crucial issue in Indonesia and Malaysia even though both countries have laws restricting it. This study aims to analyze the dynamics of child marriage in the perspective of legal anthropology, focusing on the interaction between local traditions and Islamic legal regulations. Through a qualitative approach and literature study, this study found that the root of the problem of child marriage lies not only in economic and educational factors, but also in the strong influence of old-fashioned social, cultural, and religious norms that are often dialectic with formal law. In Indonesia, the existence of Law No. 16 of 2019 has not been fully effective due to the high number of marriage dispensation applications and the strong practice of elopement such as merariq. In Malaysia, state autonomy in Islamic family law creates regulatory variations and complexities in handling child marriage. This study concludes that a holistic approach through strengthening the role of religious courts, economic empowerment, inclusive education, and campaigns involving religious and customary leaders are key in breaking the chain of child marriage.
***Keywords**: Child Marriage, Legal Anthropology, Islamic Law, Merariq, Marriage Dispensation.*

Abstrak
Perkawinan anak tetap menjadi persoalan krusial di Indonesia dan Malaysia meskipun kedua negara telah memiliki regulasi hukum yang membatasinya. Penelitian ini bertujuan untuk menganalisis dinamika perkawinan anak dalam perspektif antropologi hukum, dengan fokus pada interaksi antara tradisi lokal dan regulasi hukum Islam. Melalui pendekatan kualitatif dan studi literatur, penelitian ini menemukan bahwa akar persoalan perkawinan anak tidak hanya terletak pada faktor ekonomi dan pendidikan, tetapi juga pada kuatnya pengaruh norma sosial, budaya, dan pemahaman keagamaan kolot yang sering kali berdialektika dengan hukum formal. Di Indonesia, keberadaan UU No. 16 Tahun 2019 belum sepenuhnya efektif akibat tingginya permohonan dispensasi nikah dan kuatnya praktik kawin lari seperti merariq. Di Malaysia, otonomi negara bagian dalam hukum keluarga Islam menciptakan variasi regulasi dan kerumitan dalam penanganan perkawinan anak. Penelitian ini menyimpulkan bahwa pendekatan holistik melalui penguatan peran pengadilan agama, pemberdayaan ekonomi, pendidikan inklusif, dan kampanye melibatkan tokoh agama dan adat menjadi kunci dalam memutus mata rantai perkawinan anak.
Kata Kunci: Perkawinan Anak, Antropologi Hukum, Hukum Islam, Merariq, Dispensasi Nikah.

INTRODUCTION

Child marriage, a practice that binds two people together in the sacred bond of marriage before they reach physical, psychological, and social maturity, is still a dark shadow that haunts modern civilization in the 21st century. In the midst of the glittering progress of technology and science, millions of children, especially women, are forced to bury their dreams and childhoods, entering the world of responsible adults, for which they are not at all prepared. The United Nations (UN) through the Sustainable Development Goals (SDGs) has targeted to eliminate these harmful practices, including child marriage, by 2030.[1] However, the road to the target still feels very long and winding. UNICEF data reveals a heartbreaking reality: globally, an estimated 640 million women are married as children, with 12 million young women each year married before they turn 18.[2] These figures are not just cold statistics, but rather representations of human potential being deprived, basic rights being neglected, and the cycle of poverty that is passed from one generation to the next.

The Southeast Asia Region (ASEAN) is not spared from this worrying phenomenon. This region rich in culture and economic dynamics still faces a major challenge in protecting the future of its daughters. According to data from the ASEAN Secretariat and UNICEF, the region has one of the highest prevalence of child marriage in the world, with significant variation between countries. About 21% of women aged 20-24 in the region reported that they were married for the first time before their 18th birthday.[3] In this ASEAN map, Indonesia and Malaysia occupy a unique and crucial position to be studied. As two countries with the largest Muslim populations in the region, and share strong Malay historical and cultural roots, the two countries face similar dilemmas in addressing the practice of child marriage. In Indonesia, the Central Statistics Agency (BPS) and UNICEF report that at least 1 in 9 women (or about 11%) marry before the age of 18.[4] Even in 2022, the Supreme Court of the Republic of Indonesia recorded an increase in marriage dispensation applications that reached more than 70,000 applications,[5] a fantastic number and indicates that child marriage is still seen as a legal solution by many people.

Meanwhile, in Malaysia, while the absolute figure may be lower, the problem remains complex and deep-rooted. Data from the Malaysian Department of Statistics and NGOs such as Sisters in Islam show that this practice still persists, especially in more traditional and rural states such as Kelantan, Terengganu, and Sabah.[6] Its prevalence is closely related to poverty, low levels of education, and rigid religious interpretations at

[1] Fazilatun Nessa Indira et al., "Towards a World with No Child Marriage: Four Countries Pledge Action," *The Lancet* 401, no. 10378 (March 4, 2023): 712–13, https://doi.org/10.1016/S0140-6736(23)00109-5.

[2] Bayuh Asmamaw Hailu and Joseph Beyene, "Adolescent Marriage, Maternity, and Limited Access to Education in 106 Countries: Bayesian Analysis of Prevalence, Trend, and Prediction," *Scientific Reports* 15, no. 1 (2025): 9584, https://doi.org/10.1038/s41598-025-93893-7.

[3] Fatemeh Torabi, "Macro-Level Correlates of Early Marriage in Asia," *Journal of Family Issues* 45, no. 5 (February 17, 2023): NP38–62, https://doi.org/10.1177/0192513X231157392.

[4] Central Statistics Agency, "Prevention of Child Marriage," *Jakarta: Ministry of National Development Planning*, 2020, 0–44.

[5] Ashabul Fadhli and Arifki Budia Warman, "'Reasons for Concern' in the Determination of the Law of Marriage Dispensation in the Batusangkar Religious Court," *Al-Ahwal: Journal of Islamic Family Law* 14, no. 2 (2021): 146–58, https://doi.org/https://doi.org/10.14421/ahwal.2021.14203.

[6] David Kloos, "Experts beyond Discourse:," *American Ethnologist* 46, no. 2 (May 1, 2019): 162–75, https://doi.org/https://doi.org/10.1111/amet.12762.

the community level. What is interesting to observe is how these two countries, with deep cultural and religious similarities, respond to the same issues through the lens of laws and policies that have significant nuanced differences.

The impact of child marriage is like an interconnected chain that destroys life in a multidimensional way. From a health perspective, the body of girls who are not yet ready to conceive and give birth are at a very terrible risk. They become susceptible to pregnancy complications such as obstetric fistula, bleeding, and even maternal death.[7] Babies who are born are also at higher risk of being born prematurely, with low birth weight, and stunting.[8] In the field of education, the school doors are closed to those who marry early. Dropping out of school means cutting off their access to knowledge, skills, and opportunities to develop themselves, ultimately trapping them in economic dependence on their spouse.[9] Economically, the loss of this potential human resource not only harms individuals, but also hinders the progress of the nation as a whole. A report from the World Bank states that ending child marriage can have a great positive impact on a country's national income and productivity.[10] Most tragically, all of these impacts create a cycle of poverty that is almost impossible to break. Girls who marry early, who are poorly educated and have no skills, are more likely to support their children in poverty, who are then also at high risk of being married in order to reduce the economic burden on the family, so this cycle keeps repeating.

In the midst of all the ill effects that have been so clearly exposed, a critical question arises: why is this practice of child marriage still so stubborn? The answer lies in the deep gulf between law in books and *law in action* , between written formal regulation and the sociological reality that lives and breathes in society. Both Indonesia and Malaysia already have legal frameworks designed to limit and even prohibit this practice. Indonesia,[11] with the issuance of Law No. 16 of 2019, boldly raised the marriage age limit for men and women to uniform 19 years.[12] In Malaysia, [13] although it varies between

[7] Suiqiong Fan and Alissa Koski, "The Health Consequences of Child Marriage: A Systematic Review of the Evidence," *BMC Public Health* 22, no. 1 (2022): 309, https://doi.org/10.1186/s12889-022-12707-x.

[8] Ewa Batyra and Luca Maria Pesando, "Trends in Child Marriage and New Evidence on the Selective Impact of Changes in Age-at-Marriage Laws on Early Marriage," *SSM - Population Health* 14 (2021): 100811, https://doi.org/https://doi.org/10.1016/j.ssmph.2021.100811.

[9] Hasan A Faruq, "Female Education and Child Marriage," *Review of Development Economics* n/a, no. n/a (August 20, 2025), https://doi.org/https://doi.org/10.1111/rode.70044.

[10] Shatha Elnakib et al., "Mapping the Evidence on Interventions That Mitigate the Health, Educational, Social and Economic Impacts of Child Marriage and Address the Needs of Child Brides: A Systematic Scoping Review," *Sexual and Reproductive Health Matters* 32, no. 1 (December 31, 2024): 2449310, https://doi.org/10.1080/26410397.2024.2449310.

[11] Nuruddin Nuruddin, Aisyah Wardatul Jannah, and Dwi Martini, "Evaluating the Effectiveness of Age Restriction on Marriage in Indonesia," *Volksgeist: Journal of Law and Constitutional Sciences*, 2023, 313–30, https://doi.org/https://doi.org/10.24090/volksgeist.v6i2.9844.

[12] Rosdalina Bukido et al., "Reception of Marriage Age Limit in Marriage Law in Indonesia," *Samarah: Journal of Family Law and Islamic Law* 7, no. 1 (2023): 146–74, https://doi.org/https://doi.org/10.22373/sjhk.v7i1.15245.

[13] Nik Rahim Bin Nik Wajis et al., "CHILD MARRIAGE IN MALAYSIA: MINIMUM AGE LIMIT AND ITS IMPLICATIONS.," *Malaysia Journal Syariah & Law*, no. 2 (2020), https://doi.org/https://doi.org/10.33102/mjsl.vol8no2.252.

states, Islamic Family Law also sets an age limit, generally 18 years for men and 16 years for women, with a dispensation mechanism from the Sharia Courts.[14]

These regulations often encounter a large wall in the form of local traditions, social norms, economic pressures, and religious understanding that have been passed down from generation to generation. This is what in the perspective of Legal Anthropology is called living *law* .[15] This living law often has much stronger coercion and legitimacy at the grassroots level than a law displayed on a bookcase. Rural communities may be more obedient to customs or parental advice that justifies early marriage to avoid adultery, or to resolve conflicts, than to a law that they perceive as a distant product of the central government.[16] This is where a complex, often even clashing, dialectic occurs between the universal values of human rights and modern state law and the particular and traditional values of the community.

Indonesia and Malaysia have become a very interesting social laboratory to study this dialectic. Both are Muslim-majority countries that make Islamic law one of the main sources of their family legal values.[17] They share a strong Malay cultural heritage, where concepts of family honor, modesty, and social roles often influence views on women and marriage. However, the legal and political systems they adopt create fundamental differences in their approach and implementation. Indonesia, with a centralized civil law system, has a National Civil Code (BW), Compilation of Islamic Law (KHI), and Marriage Law.[18] Malaysia, as a federated state, gives autonomy to each state to regulate its own Islamic family law, thus creating a diverse mosaic of regulations.[19] These differences affect how marriage dispensation is granted, how courts interpret the best interests of the child, and how resistance from the community is managed.

This research intends to dive deeper into this dark hole by using the analytical knife of legal anthropology. This approach views law not only as a rigid set of written rules, but as a dynamic, living social process that is constantly negotiated by various actors in society: from the state through its judges, to the ulema and indigenous leaders, to the parents and children themselves in remote villages. This article will attempt to answer some fundamental questions: What is the face of local traditions that maintain the practice of child marriage in Indonesia and Malaysia? How do the regulation of Islamic law in both countries try to tame this tradition? And most importantly, how does the sometimes

[14] Ayako Kohno et al., "Why Girls Get Married Early in Sarawak, Malaysia - an Exploratory Qualitative Study," *BMC Women's Health* 20, no. 1 (2020): 46, https://doi.org/10.1186/s12905-020-00911-z.

[15] Tody Sasmitha Jiwa Utama, "Between Adat Law and Living Law: An Illusion of Customary Law Incorporation into Indonesia Penal System," *The Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (May 4, 2021): 269–89, https://doi.org/10.1080/07329113.2021.1945222.

[16] Erin O'Donnell, "Rivers as Living Beings: Rights in Law, but No Rights to Water?," *Griffith Law Review* 29, no. 4 (October 1, 2020): 643–68, https://doi.org/10.1080/10383441.2020.1881304.

[17] Burhanudin Harahap, I Gusti Ayu Ketut Rachmi Handayani, and Lego Karjoko, "Non-Muslims and Sharia-Based Regional Government; Comparison between Aceh, Indonesia and Selangor, Malaysia," *AL-IHKAM: Journal of Law & Social Institutions* 18, no. 2 (2023): 364–91, https://doi.org/https://doi.org/10.19105/al-lhkam.v18i2.10456.

[18] Dian Ratu Ayu Uswatun Khasanah and Anggita Doramia Lumbanraja, "The Development of Legal Interpretation by Judges in Indonesia in the Dominance of the Civil Law System Tradition," *Journal of Ius Constituendum* 7, no. 2 (2022): 232–45, https://doi.org/https://doi.org/10.26623/jic.v7i2.4799.

[19] Nurulbahiah Awang, "The Right Concept and Application of Polygamous Marriage in Malaysia: An Analysis to the Role of Court under the Provision of Islamic Family Law (Federal Territories) Act 1984," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 17, no. 1 (2024): 58–70, https://doi.org/https://doi.org/10.14421/ahwal.2024.17104.

harmonious but often tense interaction between these two great powers play out in everyday reality? By understanding these socio-legal dynamics, it is hoped that bright spots and policy recommendations that are more effective and culturally sensitive can be found to break the chain of child marriage, not with a rigid approach of coercion, but with a transformation of understanding that flows from within society itself.

RESEARCH METHODS

This study uses a qualitative approach with a literature study method (*library research*) to explore the complexity of child marriage in Malaysia and Indonesia through the lens of legal anthropology. Systematically, the research process begins with the identification and collection of various primary and secondary literature sources, such as scientific journals, textbooks, official government reports, national and sharia legal documents, and ethnographic records representing the voices of local communities. The data were then critically analyzed with *thematic content analysis* techniques to extract and compare three intersecting layers of reality: first, the narrative of traditions and cultural values that underlie the practice of child marriage; second, formal regulation of positive state law and Islamic law that applies in each jurisdiction; and third, the dialectics or contradictions that arise between the two. Through this approach, the research not only seeks to map the legal landscape descriptively, but also seeks to humanistically understand how individual agencies and communities live in the midst of the tug-of-war between customary norms, religious demands, and the legal power of the state, so as to offer a holistic and contextual perspective.

RESULTS AND DISCUSSION

Local Traditions and Social Practices That Encourage Child Marriage

Behind the statistics and legal regulations that seek to stem it, the practice of child marriage in Indonesia and Malaysia cannot be separated from the layers of complex and deep-rooted socio-cultural realities. To understand it, we must dive into a world where the decision to marry a child is not just a rational choice, but the result of an intertwining of economic destiny, cultural burdens, and religious interpretations that have been passed down from generation to generation. In many communities, child marriage is not seen as an offense, but rather as a survival strategy, a form of protection, and even in some contexts, a moral obligation to be fulfilled. These narratives form a *living law* that often speaks louder than the voices of the law far away in the capital.

In Indonesia,[20] economic pressure is the most real and painful driver. In the shadow of many families living below the poverty line, a girl is often perceived as an economic burden that must one day be shifted. In a dark but widely understood logic, marrying a daughter, even with a small dowry, means reducing one mouth that must be fed, as well as potentially getting financial assistance from the husband's family. In more extreme situations, marriage becomes a transaction to settle debts or conflicts, where a daughter is used as a bargaining chip to reconcile two hostile families. However, to simplify it solely as an economic problem is a mistake. The layers of culture and customs add a much more complicated dimension. Take for example the tradition of *merariq* or elopeth in Lombok, Sasak Tribe.[21] In their indigenous peoples, this practice is part of the legal

[20] Premchand Dommaraju and JooEan Tan, "Going against Global Marriage Trends: The Declining Age at First Marriage in Indonesia," *Asian Population Studies* 20, no. 2 (May 3, 2024): 144–64, https://doi.org/10.1080/17441730.2023.2193488.

[21] Fawaizul Umam, Mohammad Ali Al Humaidy, and Moh Asyiq Amrulloh, "Dialectics Between Islam and Local Culture in Wetu Telu Lombok Muslims' Merariq Tradition: An 'Urf Perspective," *AL-*

marriage ceremony. A young man will run away from a girl with the knowledge of his family, and after that, a family deliberation process to legalize the relationship will be carried out. However, in its development, this tradition is vulnerable to misinterpretation and manipulation. A girl who is runaway, often a minor, finds herself in an irresistible situation. The honor of the family has been tarnished in the eyes of the community, and the only way to save the face of the family is to legalize the relationship through marriage, regardless of the age and readiness of the child. Here, the concepts of family self-esteem and social anxiety towards accusations of adultery become stronger than considerations about the child's future and rights. The fear that girls who have reached puberty will fall into adultery if not married soon is a very strong narrative, not only in Lombok, but also in many traditional Muslim communities in Java, Sumatra, and Sulawesi.[22]

This narrative is supported by an outdated religious understanding at the grassroots level, where Islamic teachings about covering the awrah and avoiding vices are misinterpreted narrowly, precisely at the expense of the future of education and child development. Local religious leaders, who should be at the forefront of straightening understanding, sometimes become the party that provides legitimacy by easily granting marriage dispensation or supporting early marriage under the pretext that it is better to marry than to commit adultery. Another factor that is no less important is the limited access to education for girls, especially in rural and remote areas. Distant schools, expensive costs, and the perception that higher education for women is a wasted investment as it will eventually return to the kitchen as well, closing the door of opportunity for them to see the wider world. This vicious circle then turns: poverty limits education, low education deepens poverty, and ultimately, marriage is seen as the only way out, which further cements that poverty for the next generation.

Across the Strait of Malacca, Malaysia faces similar challenges, but with distinctive socio-cultural colours.[23] Despite being known as a more economically developed country, the wide gap between urban and rural areas creates pockets of poverty that are fertile ground for the practice of child marriage. Economic and cultural factors intertwine in a similar way. In remote villages, the future often feels limited. For many families, pairing their daughter with someone who is considered well-established, even if the child is still very young, is seen as a guarantee of financial and social security. However, the Malaysian context shows very significant geographical and ethnic variations. The practice of child marriage is not evenly distributed. Its prevalence is strikingly higher in east coast states such as Kelantan and Terengganu, which are known for their conservative Islamic political power, as well as in rural communities in Sabah and Sarawak inhabited by indigenous ethnic groups that still hold fast to their customs. In Kelantan, for example, reports from civil society organisations show that applications for marriage dispensation in sharia courts are still relatively high, often supported by the

IHKAM: Journal of Law & Social Institutions 19, no. 1 (2024): 104–25, https://doi.org/https://doi.org/10.19105/al-lhkam.v19i1.10603.

[22] Santy Yanuar Pranawati et al., "Chastity Value as a Risk Factor for Prostituted Adolescents in Indonesia: A Qualitative Exploration," *Asia Pacific Journal of Social Work and Development* 30, no. 2 (April 2, 2020): 93–105, https://doi.org/10.1080/02185385.2019.1710725.

[23] Iyshinii Rao Raja Rao, Chee Ying Kuek, and Eng Siang Tay, "Child Marriage in Malaysia: AI-Assisted Decision Making," *Pakistan Journal of Life & Social Sciences* 22, no. 2 (2024): 15124–29, https://doi.org/https://doi.org/10.57239/PJLSS-2024-22.2.001090.

consent of guardians and strong community reasons.[24] Social structures and the role of the extended family also play a very central role.

The decision to get married is often not an individual or even a biological parent's decision, but involves pressure and expectations from grandparents, grandparents, uncles, and aunts. A daughter who is considered to be of biological age will get a constant question from the extended family, "When to get married?" This social pressure creates an environment in which early marriage becomes an expected norm, a natural rite of passage. For families, marrying children can also strengthen ties between clans or resolve conflicts between families, similar to what happens in Indonesia. Unique in Malaysia is the intervention of state religious institutions which, while having the authority to prevent, are sometimes caught up in the local cultural logic of preferring the path of dispensation to rejection. In addition, certain ethnic communities, such as some tribes in Sarawak, have their own customary traditions that may view early marriage as commonplace.[25] In the context of Malaysia's multiethnicity, a one-size-fits-all approach is clearly not going to work. A deep understanding of the local peculiarities of each community, both Malay Muslims in the Peninsula and ethnic groups in Borneo, is the key to unravelling this tangled thread. In both Indonesia and Malaysia, we see that the root of child marriage is a spider web consisting of the absence of economic choice, the burden of maintaining honor, distorted religious interpretations, and restrictive social structures.[26] Countering this cannot be done only by relying on the force of law from above, but must be done with an approach that opens up other options for families and girls themselves: access to quality and affordable education, real economic opportunities, and a transformation of religious understanding that emphasizes more on justice and the welfare of children rather than just on concerns about sin.

Islamic Law Regulations Related to Marriage Age Limits

Efforts to respond to the socio-cultural complexities that underlie child marriage find their formal form within the legal regulatory framework built by both countries. However, the path taken by Indonesia and Malaysia in formulating marriage age limits reflects fundamental differences in constitutional structures, legal traditions, and approaches to religious authority. The legal narrative written in this law book and compilation of laws is not a dead text; It is the product of a long dialectic between the idealism of policymakers, the insistence of children's rights activists, and the sociological realities of diverse societies. In each article, there are stories of compromise, negotiation, and hope to find a common ground between the rule of law and respect for the values that society believes in.

In Indonesia, the journey of regulation on the age of marriage is a noteworthy evolution of thought. Initially, Indonesia's positive law, especially in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, set an age

[24] Nurul Huda Mohd Razif, "Between Intention and Implementation: Recent Legal Reforms on Child Marriage in Contemporary Malaysia," *Journal of Legal Anthropology* 6, no. 1 (2022): 1–23, https://doi.org/https://doi.org/10.3167/jla.2022.060102.

[25] Mohd Al Adib Samuri, Nurhafilah Musa, and Helmiah Abd Razak, "Malaysian Civil Society Organizations (CSOs) Perspective on Child Marriage," *Akademika* 94, no. 1 (2024): 266–80, https://doi.org/10.17576/akad-2023-9401-20.

[26] Miftahus Sholehudin et al., "Cancellation of Marriage Due to Apostasy in Islamic Law and Human Rights: A Comparative Analysis of Indonesia and Malaysia," *De Jure: Jurnal Hukum Dan Syari'ah* 17, no. 1 (2025): 33–51, https://doi.org/https://doi.org/10.18860/j-fsh.v17i1.31465.

limit of 19 years for men and 16 years for women.[27] However, in the context of Islamic law, the Compilation of Islamic Law (KHI) which applies as a guideline for Religious Courts actually adopts a lower figure, namely 19 years for men and 16 years for women, as stated in Article 15.[28] This difference creates a problematic dualism of interpretation, where a marriage may not qualify under national law but is considered valid in the context of religious justice. Pressure from various parties, especially women's organizations and children's rights activists, supported by data on the adverse effects of child marriage, has finally driven major changes. In 2019, Indonesia took a revolutionary step by issuing Law No. 16 of 2019 which equalized the minimum age of marriage for men and women to 19 years. This change is not just an increase in numbers, but a philosophical breakthrough that recognizes the equality of maturity and rights between men and women, and is in line with the definition of a child under the Child Protection Act. This step has been praised by many international parties as a significant advance in child protection efforts.

However, the law is rarely black and white. This progressive law also recognizes the existence of exceptions through a mechanism known as marriage dispensation, which is regulated in Article 7 paragraph (2). This mechanism allows the Religious Court to grant marriage licenses under the age limit of 19 years, with certain reasons that must be proven in depth.[29] This is where a very interesting tug-of-war occurs between written law and reality on the ground. The Religious Courts, which are directly confronted with the pulse of society, are often faced with a complicated dilemma. On the one hand, judges have an obligation to protect children and apply the law. On the other hand, they have to face pressure from families who come up with reasons that, in their context, are very real and urgent. The reasons that are often put forward in dispensation applications and are granted quite often are very diverse, reflecting the complexity of the problem. The most common reason is the fear of adultery, especially if the bride-to-be has already had intercourse or the woman is already pregnant out of wedlock and can result in an abortion.[30] In the perspective of many judges with a pesantren background, preventing major sins such as adultery is considered a more important benefit (*dar'ul mafasid*) than waiting for the ideal age. Another reason that often arises is economic factors, where families argue that by getting married, their economic burden will be reduced and the future of the child will be more secure. Not infrequently, the reason given is that the child is considered "mature enough" physically and mentally to marry, or to avoid family disgrace in certain cases. Religious Courts, in deciding, often conduct a direct examination of the bride-to-be to assess his maturity and willingness, although in practice, family pressure is often difficult to measure. This process shows how Indonesian law seeks not to be a rigid ivory tower, but to still leave room for specific sociological and humanitarian considerations, albeit at the risk that this space may be misused or interpreted too loosely.

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[27] Ainun Yusri Dwiranti, Betty Rubiati, and Sonny Dewi Judiasih, "Changes in the Age of Marriage Requirements for Women According to the Marriage Law as an Effort to Prevent Underage Marriage," *Rule of Law: Journal of Legal Research* 31, no. 1 (2022): 48–65, https://doi.org/https://doi.org/10.33369/jsh.31.1.48-65.

[28] Gandi Liyorba Indra, M Yasin Al Arif, and Abdul Qodir Zaelani, "The Ideal Age For Marriage in The Compilation of Islamic Law (KHI) and Psychology," *Al-'Adalah* 20, no. 1 (2023): 1–18.

[29] Wardatun Nabilah et al., "Between Protection and Permissiveness: A Fiqh Siyasah Reexamination of Marriage Dispensation in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 24, no. 1 (2025): 137–51.

[30] Wahyudi Wahyudi and Usep Saepullah, "The Legality of Abortion Without Spousal Consent in Islamic Jurisprudence," *PATTIMURA Legal Journal* 4, no. 2 (2025): 104–24, https://doi.org/https://doi.org/10.47268/pela.v4i2.19055.

Meanwhile, in Malaysia, the regulatory landscape is much more colorful and fragmented, reflecting a federated system that gives each state full autonomy in regulating its own Islamic family law. There is no single uniform Islamic marriage law nationwide. Each state has its own *Islamic Family Law Enactment*, which results in a varied mosaic of regulations. Most states, including developed regions such as Selangor and the Federal Territory of Kuala Lumpur, set a relatively more advanced age limit of 18 for males and 16 for females. However, some states still maintain very low and controversial age limits. For example, in Kedah, the law allows marriage at the age of 16 for men and 14 years for women. This stark difference creates legal uncertainty and even triggers *forum shopping*, where citizens from states with strict rules may move to marry in states with looser rules. The dispensation mechanism, often referred to as the granting of permission by a guardian judge (a court acting as a guardian), also exists in Malaysia.[31]

However, the process is often seen as looser and more influenced by cultural considerations than in Indonesia. A key distinguishing aspect is the requirement to obtain consent from the child's original person (guardian), who in most cases is the parent. If the parents approve the marriage, the Sharia Court often has a tendency to grant the request for a dispensation, taking into consideration that the parent is considered to know what is best for the child and is responsible for the morality of the child. Reasons such as resolving social problems (getting pregnant out of wedlock), fulfilling parental requests, or even economic reasons, are often considered sufficient to grant permission.

Supervision and in-depth examination of the mental and physical readiness of the bride-to-be, although regulated in several procedures, in practice are not always carried out strictly. State autonomy also means that local cultural and political sensitivities play a huge role. In more conservative states, pressure to defend Islamic values and customary autonomy often discourages local governments from raising the marriage age limit, as it could be interpreted as submitting to central pressure or Western values. Thus, although textually many Malaysian state laws are already quite progressive, their implementation on the ground, particularly in terms of granting dispensations, is still very loose and highly dependent on the interpretation of sharia judges and local social pressures. The comparison between these two countries shows that having written regulations is not enough. The effectiveness of these regulations is largely determined by uniformity of interpretation, strictness in granting dispensations, and most importantly, support from all elements of society to prioritize the best interests of children over traditional and short-term economic considerations.

Similarities and Differences in Child Marriage Practices

Mapping the similarities and differences in child marriage practices between Indonesia and Malaysia is like observing two trees that grow from similar cultural roots, but shaped by different political winds and legal grounds. These two countries, as cognate neighbors, face a paradox-like shadow where economic progress and modernity go hand in hand with the survival of traditions that often deprive children of their rights. However, when observed more closely, the patterns that emerge show a complex weave, in which threads of similarity and difference intertwine, creating an image unique to each nation. The main similarities lie in the sociological breath that drives these practices, while the

[31] Nurul Huda Mohd Razif, "Nikah Express: Malay Polygyny and Marriage-Making at the Malaysian–Thai Border," *Asian Studies Review* 45, no. 4 (October 2, 2021): 635–55, https://doi.org/10.1080/10357823.2020.1870931.

differences are most pronounced in how the state is present through its legal framework and policies to respond to that breath.[32]

At the most basic level, Indonesia and Malaysia share a socio-cultural heritage that is fertile ground for the survival of the practice of child marriage. Both have societies with strong Malay and Islamic roots, where the values of collectivity, family honor, and religious observance play a central role in shaping social behavior.[33] In both contexts, the decision to marry is rarely a purely individual matter; it is a family project, even a community. The social pressure to marry girls once they are considered biologically mature is a narrative that resonates both in rural Java and in villages in Kelantan. Fears of adultery, or just rumors that can defame the family, are a very real and difficult driving force for many parents. On both sides of the Strait of Malacca, poverty and limited access to quality education, especially for girls in rural and remote areas, create a vicious cycle of the same evil. Disconnected education narrows horizons and opportunities, while the absence of economic opportunity makes marriage often seen as the only viable way out, or even as a survival strategy to reduce the burden on the family. In other words, although the statistics may vary, the underlying pulse of this practice of a combination of economic pressures, patriarchal cultural norms, and literal religious understanding is very similar. In many cases, parents who decide to marry their minor children do so not on the basis of malicious intent, but rather out of a deep, albeit misguided, belief that they are doing their best to protect their child's future and honor in a world that they view as full of moral threats and economic uncertainty.

However, when we turn to look at countries' responses to this phenomenon, sharp differences begin to emerge, and these differences ultimately shape the *unique landscape* of child marriage practices in each country. The most fundamental difference lies in its legal and political structure.[34] Indonesia, as a unitary country, has taken a very bold and progressive step by issuing Law No. 16 of 2019 concerning Marriage, which equalizes the age of marriage for men and women at 19 years. This uniform national policy is a clear statement of the country's commitment to protecting its children and promoting gender equality. He created a common legal benchmark that can be used by activists and law enforcement in all corners of the country to fight for children's rights. In contrast, Malaysia, with its federated system, faces more complicated challenges. The autonomy granted to each state in regulating its own Islamic family law has resulted in a diverse kaleidoscope of regulations. The variation in the marriage age limit from relatively progressive in Selangor to very low in Kedah not only creates legal uncertainty, but also has the potential to trigger marriage migration, where citizens from states with strict rules will go to states with loose rules to get married. This fragmentation of the law reflects the ongoing tug-of-war between the federal government that may want to harmonize in a more protective direction, and state governments that want to maintain their autonomy and religious cultural interpretations.

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[32] Abdulah Pakarti, Muhammad Husni, Wahyudi Wahyudi, Ah. Fathonih, Fauzan Ali Rasyid, and Husain Husain, trans. 2025. "The Construction of Islamic Law on Marriage: A Normative Study of Rights, Harmony, and Its Limits". Al-Battar: Ultimate Journal of Law 2 (2): 99-111. https://doi.org/10.63142/al-battar.v2i2.172.

[33] Yusril Mahendra et al., "The Legal Status Of Children Outside Marriage: A Comparative Study Of Civil Law In Indonesia And Malaysia," *Hukum Islam* 24, no. 2 (n.d.): 212–24, https://doi.org/http://dx.doi.org/10.24014/hi.v24i2.27669.

[34] Hazar Kusmayanti et al., "Protection of Children's Rights: A Review of Child Marriage Policies in Indonesia, Malaysia, and India," *SASI* 30, no. 2 (2024): 234–48, https://doi.org/10.47268/sasi.v30i2.2044.

An equally striking difference can be seen in the mechanism for granting dispensations or permits for underage marriage. In Indonesia, although marriage dispensation is still a widely used back door, at least the process is concentrated in the Religious Court and has come under the attention of the public and activist oversight. There have been attempts, although not perfect, to make this process more rigorous, by requiring psychological examinations and readiness of the bride-to-be. In recent years, we have even seen a tendency on the part of some judges of the Religious Court to be more cautious and more often reject dispensation applications whose reasons are considered to be inconclusive, reflecting a slow but definite paradigm shift. In Malaysia, the mechanism for granting permission by guardians of judges in Sharia Courts is often seen as looser and more influenced by parental consent.[35] If the child's parents or guardians give their blessing, the court often has a tendency to grant the request, taking into account that the primary moral responsibility rests on the shoulders of the family. This approach, which places more emphasis on family autonomy, unfortunately often ignores the principle of "best interests of the child" which should be the main consideration. As a result, although legally many states in Malaysia have relatively low age limits, in practice, marriage at even lower ages can still be legalized relatively easily than in Indonesia, where uniform laws provide a stronger basis for refusal.

The root of the problem of child marriage in Indonesia and Malaysia grows from similar sociological soils, namely poverty, cultural norms, and religious interpretations, the way the two countries respond to it through their legal instruments is very different. Indonesia has chosen the path of centralization and harmonization of law with more progressive and uniform policies, although its implementation on the ground still faces great challenges from the strong law that lives in society. Malaysia, on the other hand, with its federated system, faces regulatory fragmentation that makes handling efforts inconsistent and highly dependent on the local politics of each state.[36] The similarities between the two countries lie in their struggle to reconcile the demands of modern law with deep-rooted cultural realities. The most fundamental difference lies in the legal tools and approaches they use in the struggle. The future of child protection from early marriage practices in both countries will be largely determined by their ability not only to enforce good laws, but also to take a holistic approach through education, economic empowerment, and the transformation of religious understanding so that written law is not just a rule on paper, but truly alive and imbued by all walks of life.

The Interaction Between Local Traditions and Islamic Law in Child Marriage

The encounter between local traditions and Islamic law in the context of child marriage is not a clash between two separate and hostile forces, but a complex tug-of-war, a sometimes harmonious but often tense dialogue between values that are believed to be hereditary and universal principles that seek to be realized through written law. This interaction occurs not in sterile courtrooms, but in the hearts and minds of parents, in customary assemblies, in religious lectures in suraus, and most crucially, in the courtroom

[35] Kamarusdiana Kamarusdiana et al., "Pre-Marital Education: Concepts and Regulations in Indonesia and Malaysia," *Al-Ahkam* 32, no. 1 (2022): 41–64, https://doi.org/https://doi.org/10.21580/ahkam.2022.32.1.10709.

[36] Zhorif Agung Imaduddin, Deslaely Putranti, and Muhammad Habibi Miftakhul Marwa, "Interreligious Marriage in Indonesia and Malaysia: Strict and Loose Legal Policy," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 17, no. 2 (2024): 185–204, https://doi.org/https://doi.org/10.14421/ahwal.2024.17203.

of the Religious and Sharia Courts, where a judge bears a very heavy burden to bridge two often conflicting worlds. This dynamic creates a fluid legal landscape, where sacred texts, statutes, and ancestral values influence each other, forming a unique reality full of paradoxes.

At the most practical level, the influence of local traditions on the interpretation of Islamic law is manifested in the ways of society and often the law enforcers themselves understand and apply key concepts such as maturity (*bulugh*), benefit (*maslahah*), and prevention of harm (*dar'u al-mafasid*). Within the framework of pure Islamic law, marriage should be built on the foundation of physical, mental, and economic readiness, with the aim of realizing a family that is sakinah, mawaddah, wa rahmah.[37] However, local traditions often narrow this understanding to mere biological maturity. A girl who has menstruated, in the view of many traditional communities, is automatically considered old enough to marry, regardless of whether she has completed her education or has the psychological readiness to become a wife and mother. The concept of benefit has also undergone a shift in meaning. In the perspective of progressive Islamic law, the benefits should be viewed holistically, including the protection of children's health, education, and future. However, in the hands of local traditions, benefits are often reduced to narrow considerations: benefits to avoid family disgrace, benefits to resolve conflicts, or benefits to ease economic burdens. The principle *of dar'u al-mafasid* (preventing harm) that should be used to protect children from harm, is often reversed as a justification for early marriage, where the harm to be prevented is the potential for adultery, while the much more real damage to the future of the child is ignored. This logic then gains legitimacy when it is supported by local religious or customary figures who have great influence, creating an interpretation of Islamic law that has been "localized" and adapted to the dominant cultural values.

The greatest challenge in the harmonization between tradition and law lies in the fact that Islamic law is not a monolithic system; it lives and breathes through the interpretation (*ijtihad*) of scholars and judges that cannot be completely detached from the social and cultural context in which they belong. A judge of the Religious Court in Lombok, who interacts with the merariq tradition every day, will certainly have different sensitivity and consideration than a judge in Jakarta. Similarly, a Shariah judge in Kelantan will face unique social and political pressures that his colleagues in Kuala Lumpur may not have felt. They are faced with a very real dilemma: applying positive law rigidly at the risk of being perceived as not understanding the reality of society, or granting dispensation on the grounds of special conditions that can actually weaken the spirit of the law itself. In many cases, the choice to grant a dispensation is often taken not because the judge agrees with child marriage, but because of a pragmatic consideration that rejecting a request for a dispensation might create greater harm, for example, forcing the couple to live together without a legal bond in the eyes of society, or making the pregnant woman stigmatized without the legal protection of a husband. In other words, Islamic law is often hijacked to legitimize a practice that is actually contrary to its spirit and main purpose (*maqasid al-shari'ah*), which is to protect one's descendants, intellect, soul, honor, and property.

Harmonization became increasingly difficult because state laws were often seen as alien and imposed from above, while local traditions were perceived as organic and time-

[37] Iffatin Nur and Muhammad Ngizzul Muttaqin, "Reformulating The Concept of Maslahah: From A Textual Confinement Towards A Logic Determination," *Justicia Islamica* 17, no. 1 (2020): 73–91, https://doi.org/https://doi.org/10.21154/justicia.v17i1.1807.

tested. The central government's efforts to raise the marriage age limit, for example, are often seen as interventions that do not understand local wisdom and the specific conditions of each region. Resistance to this change in the law does not always stem from malicious intent, but often from a deep belief that community values have managed to maintain social order for generations. To break this vicious circle, a much more subtle and multidimensional approach is needed than simply publishing new laws. What is needed is a reconciliation between tradition and law, a process that does not marginalize local values but instead invites people to reflect on their traditions in the light of a more universal and progressive maqasid al-shari'ah. This process requires the involvement of all parties: not only the government and the judiciary, but also indigenous leaders, religious leaders, and most importantly, the parents and young people themselves. They need to be invited to dialogue, to understand that protecting the future of girls by providing them with a high education and ensuring their readiness for marriage is not a betrayal of tradition, but rather the deepest practice of true Islamic values, which always put justice, compassion and the pursuit of knowledge at the top of the list. Only in this way can Islamic law truly become an empowering, not shackling, tool, and local traditions can evolve into a force that protects, not robs, the future of their future generations.

Implications and Policy Recommendations on Child Marriage

The practice of child marriage, which is still going on in the midst of Indonesian and Malaysian modernity, is not a stand-alone phenomenon. It is a knot in a very wide net, which, when pulled, will move all aspects of the life of the nation and the state. Every girl who is forced out of school, every teenager who has to assume the responsibility of being a parent prematurely, and every baby born from an unprepared womb, is not only a personal tragedy, but also a collective wound that eats away at the social foundations and the future of these two countries. The implications are multidimensional, permeating the national health body,[38] collapsing economic potential, and most devastatingly, depriving a child of his or her basic right to dream and determine his or her own future. Therefore, the response given should no longer be partial or just patchwork. It takes a bold policy breakthrough, visionary, and most importantly, touching the real root of the problem.

The most direct and tragic impact of child marriage certainly falls on the body and psychology[39] of girls. From a reproductive health perspective, pregnancy and childbirth in adolescence is a dangerous adventure. A body that has not yet fully developed is forced to bear a very heavy load, increasing the risk of terrible complications such as pre-eclampsia, obstetric fistula, postpartum hemorrhage, and even maternal death. Unborn babies also face the threat of stunting, low birth weight, and other developmental disorders, creating a cycle of health problems that will be carried over to the next generation. Psychologically, they are forced to skip crucial stages of development. Adolescence, which was supposed to be filled with the exploration of identity, friendship, and the search for identity, was suddenly cut short and replaced by the demands of being a wife and mother. This often triggers depression, anxiety, and feelings of isolation, which are exacerbated by their frequent loss of access to peers and their social support systems. On a more macro level, the implications for the future of the young generation and the

[38] Wahyudi, *Health Law: A Review of Juridical Aspects* (Sleman, Yogyakarta: PT. Media Youth, 2024).

[39] Yvette Efevbera et al., "Girl Child Marriage as a Risk Factor for Early Childhood Development and Stunting," *Social Science & Medicine* 185 (2017): 91–101, https://doi.org/https://doi.org/10.1016/j.socscimed.2017.05.027.

nation as a whole are enormous. Every girl who drops out of school means a loss of the potential of quality human resources. They are generally stuck in low-wage jobs and do not have the financial ability to break the cycle of poverty. This not only limits their social mobility, but also hinders the pace of national economic development. A nation cannot progress if half of its young population is not given the opportunity to develop optimally.

Realizing the breadth and depth of these implications, it becomes increasingly clear that the approach that has been often relied upon, namely simply revising the law, is clearly not enough. Legal *reform* is a very important step and needs to be appreciated, as Indonesia did with Law No. 16 of 2019. However, the law is only a blunt knife if it is not accompanied by massive and comprehensive social engineering. The law can command, but it cannot necessarily change a mindset that has been ingrained for decades. This is where the importance of a holistic approach that attacks the problem from all sides is important. First, and most importantly, is education. Access to quality education, especially for girls in rural and remote areas, must be a top priority. School is not only a place to gain knowledge, but also a safe space where girls can develop their potential, build confidence, and see that their future has many options other than being a child bride. Scholarship programs, the development of adequate school infrastructure, and campaigns on the importance of sending girls to high school must be intensified. Second, family economic empowerment is no less important. Programs that can increase family incomes, such as skills training, access to capital, and micro-business development, can alleviate the economic pressures that are often the main reasons for early marriage. When families have a more stable source of livelihood, girls are no longer seen as burdens that must be quickly entrusted to others.

More specific policy recommendations also need to be directed to institutions that are at the forefront, namely the Religious Courts in Indonesia and the Sharia Courts in Malaysia. The role of judges in deciding marriage dispensation applications is crucial. Currently, the consideration of decisions is often only fixed on formal legal aspects and administrative evidence. It is very rare for legal anthropological considerations, namely a deep understanding of cultural backgrounds, social pressures, and power dynamics in the family that underlie dispensation requests, to be part of the judge's considerations. Therefore, ongoing training is needed for judges on legal anthropology and sociology of marriage. The judge needs to be equipped with the ability to conduct more in-depth examinations, not only ascertaining the existence of an urgent legal obstacle, but also investigating whether the child is genuinely giving consent without coercion, understanding the implications of the marriage, and most importantly, whether this decision is really in his best interests. In some cases, judges should have had the courage to refuse dispensations and instead refer families to social services or other assistance programs that can address the root cause, such as economic assistance or counseling.

In the end, there is a need for awareness campaigns that target directly to the grassroots. This campaign cannot be carried out with rigid bureaucratic language and approach. It must be done in the language of the local community, involving the figures they trust most: indigenous leaders and religious leaders. The kiai, ustadz, mosque imams, and traditional elders have a huge influence in shaping public opinion. They are the ones who should be at the forefront of spreading a more progressive religious understanding, which emphasizes that protecting the future of children is part of carrying out religious commandments, and that preventing stunting and maternal mortality is a form of practicing *maqasid al-shari'ah*. *These* workshops, seminars, and intensive dialogues with key figures should be on the priority agenda of governments and civil society

organizations. They need to be invited to become agents of change, to deliver sermons and lectures that emphasize the importance of reproductive education and health, and to no longer easily give legitimacy to child marriage. Only by embracing them, and not judging or marginalizing them, can sustainable change be realized. Ultimately, fighting child marriage is more than just winning the legal battle; It is about winning hearts and minds, about building a national consensus that the future of our children is the most valuable asset, which should not be sacrificed for any reason.

CONCLUSION

The practice of child marriage in Indonesia and Malaysia represents a complex dialectic between the formal laws of the state, the regulation of Islamic law, and the local traditions that *live in* society. Although both countries already have a legal framework that restricts child marriage in Indonesia through the progressive Law No. 16 of 2019 and Malaysia through the variation of *Islamic Family Law* in each state, its implementation still faces major challenges due to the strong influence of sociocultural factors such as poverty, patriarchal norms, outdated religious understanding, and social pressure to maintain family honor. Legal anthropological analysis reveals that harmonization between Islamic law and local traditions requires a holistic approach that goes beyond legal reform, including economic empowerment, inclusive education, strengthening the capacity of judges to consider the anthropological dimension of marriage dispensation, as well as community-based campaigns involving religious and customary leaders as agents of change to transform the cultural and religious narratives that have supported the practice.

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