

# Distortion of Marriage Age in Asian Muslim Countries

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**Abstract:** The polemic surrounding the marriage of minors is now one of the crucial issues. The minimum limit for someone to marry is suspected to be one of the triggers of polemic. When viewed from some minimum age of marriage in the world, it is not always by the reality of the community, meaning that many marriages are under marriage as agreed in each country. This is the cause and influence of marriage age distortions in some countries that permit underage marriages. Whereas in 2014, the Secretary-General of the United Nations recommended specific targets in the post-2015 Sustainable Development Goals to abolish elderly marriage. This recommendation is supported by 116 member states of the United Nations, including several Muslim countries. Therefore, a global consensus on the need to eliminate child marriages has become increasingly prominent in recent years. Motivation in the study that will be studied is the lack of laws of Muslim countries in enforcing the limits of marriage age so that the number of cases of underage married children. The purpose of this study is to compare some of the regulations in Muslim countries against the abolition of marriage age limits that reflect the lack of protection for women from a sense of justice, in order to change the situation (women) in a better direction. Data collection methods are carried out with library research. Then specific analyzes in legislation are done by looking for concepts, the main terminology in the text. The main finding in this study is that there are many deviations in the age of marriage, even though there are state laws that regulate the age limit of marriage.

## 1 INTRODUCTION

Islamic Law does not regulate entirely about the age limit of marriage. Just call *baligh* as the minimum age allowed to marry. The absence of Islamic religious stipulations concerning the minimum and maximum age limit to be able to establish a marriage that is assumed to allow concessions for humans to regulate it. So that one's maturity in Islam is often identified with *baligh*. With the fulfilment of *baligh* criteria, it has enabled a person to marry. Indirectly that maturity is significant in marriage (Yuslem, 2017).

The polemic surrounding the marriage of minors is now an important issue. The minimum limit for a person to marry is suspected to be one of the polemic triggers. The controversy between conservatives who tend to uphold the concept of textual literature and the reformists who tend to understand contextual texts is a long debate that leads to differences in the application of the law in some countries.

In the Convention on the Rights of the Child does not explicitly define the marriage of the child's age, but the child is clearly defined as a person under the age of 18. (Janssen *et al.*, 1992) The United Nations convention on marriage approval, minimum age for marriage, and marriage registration has been in effect since 1964. The Convention emphasizes that marriage can only be made if both partners have given their consent freely and fully (Convention on Consent to Marriage, 1988).

When viewed from some minimum age of marriage in the world, it is not always consistent with the reality of society, meaning that many marriages are under the age of marriage as agreed in each country. Whereas in 2014, the Secretary-General of the United Nations recommended a particular target in the Sustainable Development Goals post-2015 to eliminate marriage of child aged. This recommendation is supported by 116 (one hundred and sixteen) member states, including Indonesia (United Nations General Assembly, 2014). Many countries in the region set a minimum

age of marriage lower than the minimum international marriage age. This allows women to marry earlier than men, who have no marriage age limit or allow dispensation for the marriage of the child's age. All of these policies can retain the acceptance of marriage of the child's age and violate the rights of the child (Evenhuis M., 2014).

Attempts to eliminate child-marriage are a response to the growing number of evidence showing the scale and extent of the problem. More than 700 (seven hundred) million women living today are married while still a child, of which one in three are married before the age of 15 (fifteen) years (Fund, 2014). Young married girls face poor conditions for all social and economic indicators compared to girls delaying marriage age, including lower levels of education and higher poverty rates. This lousy impact will also be experienced by their children and can continue in future generations. This is the cause and effect of marriage age distortions in some countries that permit underage marriages. Therefore, a global consensus on the need to eliminate the marriage of children has become more prominent in recent years.

## 2 LITERATURE REVIEW

Given the importance and sensitive nature of this problem, there are many efforts to determine the minimum age standards for marriage through international agreements. However, because there is no universal understanding of marriage, it is impossible to establish principles and regulations that command universal obedience. These difficulties are reflected in international agreements on this issue, which often fail to determine the age limit that is certain to marry, or the age of marriage is limited, but there are still irregularities in the form of concessions to marry underage with various conditions set in the majority countries Muslims in Asia.

Rumminger et al. (2012) used data in their study, *"CEDAW and Muslim Family Laws In Search of Common Ground"*. Early marriage of girls under the age of eighteen is a form of violence. They are deprived of their childhood and forced to take up considerable household and family responsibilities, sometimes on top of their educational or economic responsibilities. Such heavy burdens on young girls often lead to marital problems and subsequent marital breakdown and divorce.

A study by Jisun (2016) on their study about *"Early Marriage of Women: The Case of*

*Bangladesh"*. The state has laws to regulate early marriage, but these laws are not followed by most of the people in our country. The influential factors of early marriage were found to be the respondent's education, husband's education, place of residence, religion, and respondent's work status. In another way, these factors can cause early marriage rise.

It can be seen that many studies have been conducted around the world to reveal those factors which linked to early marriage. Different studies focused on different variables. However, in Asian countries, there is hardly any significant study focusing on the research is the distortion of marriage age in Muslim countries in Asia by discussing legal issues regarding marriage under the minimum age of marriage that has been stipulated by marriage laws in some Muslim countries which reflects the lack of protection for women and a sense of justice so that this discussion is needed to change the situation (women) in a better direction.

## 3 RESEARCH METHOD

This study discusses several Asian countries with the majority of Muslims ratified by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), including: (Indonesia, Malaysia, Brunei Darussalam, Bangladesh and Pakistan). Due to limited resources, this study is limited to several Muslim countries with selected countries with significant Muslim populations.

Based on this, this study uses a comparative approach, which is to find out the similar meaning contained in the CEDAW Convention with the applicable law in Muslim countries. The method of collecting materials is done by library research.

## 4 RESULT AND DISCUSSION

Child marriage is a fundamental violation of the rights of girls. Child marriage violates the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Universal Declaration of Human Rights. International human rights law states that marriage is a formal and binding agreement between adults. CEDAW states that marriage of child age shall not be declared lawful (Art 16 (2)). The marriage-age trajectory of children, estimated at 142 million girls (or 14.2 million per year) will marry before the age

of 18 from 2011 to 2020, and 151 million girls or 15.1 million per year marry before the age of 18 from 2021 to 2030 (Loaiza and Wong, 2012).

Minimum age of marriage continues to vary among Muslim countries. In the most developed countries have established marital age equality for men and women. However, it is not enough to change the minimum age of marriage and ensure that its citizens will obey the law, this can be seen from the legal marriage under the minimum age of marriage which has established marriage laws in some Muslim countries.

#### 4.1 Indonesia

In Indonesia, the marriage of child age to a certain degree is still considered valid in Indonesia. The petition for judicial review of Article 7 of the Indonesian Marriage Act of 1974 concerning the minimum age of marriage has led to an intensive debate in Indonesia. Under the current Marriage Act, parental consent may be submitted to support all marriages under 21 (twenty-one) years of age. With the consent of parents, women can legally marry at the age of 16 (sixteen) years and men at the age of 19 (nineteen) years. Parents of girls under the age of 16 (sixteen) years may marry off their daughters while still very young by applying to a marriage or Religious Court to grant a dispensation. However, the review of the material was rejected by the Constitutional Court on 18 June 2015. The Constitutional Court stated that the marriage age change is the authority of the House of Representatives (DPR). (Badan Pusat Statistik and UNICEF, 2016)

Minimum age of marriage is 19 years for men and 16 years for women, and provisions for marriage are below the minimum age, depending on the court's decision and parental consent. So in this case, the marriage law not only fails to meet the 18 year age threshold for marriages recommended by the Convention on the Rights of the Child (CRC) ratified by Indonesia, but also contradicts the 2002 Law on Child Protection, which requires people (Article 26, 1c) and define the child as any person under the age of 18 (Article 1, paragraph 1). Likewise, marriage law also sets a lower marriage age for girls than boys. Therefore, girls are more vulnerable to adverse outcomes than marriage-age children than boys. Different minimum ages of girls and boys also reflect discriminatory and harming views because girls may marry at a lower age than boys driven by the expected roles of those in the family and community (Badan Pusat Statistik and UNICEF, 2016).

#### 4.2 Malaysia

Malaysia, formerly a new law on Malaysian marriage, in some areas of Malaysia only Johor makes provisions on the minimum age allowed to be married. On the contrary, after the renewal, only Perak is not regulated. The reason may be because it is considered against the shari'ah. As for the territory of the alliance, Kelantan, Kedah, Melaka, Negara Sembilan, Selangor and Pulau Pinang, set a minimum of 18 (eighteen) for men and 16 (sixteen) for women. Now indeed the marriage rates tend to be in Malaysia, but it is assumed that the decline is not due to factors of legislation but only because of educational factors and job opportunities.

In the current law in Malaysia, the minimum age of marriage for women is 16 and for men is 18 years. If married persons are under the age of 16, Sharia judges must give written permission, which means there will be court proceedings in which they must go to court and ask permission to marry (Nemat, 2006).

Marriage between 16 years and 18 years is only permitted if there is a legitimate benefit, the parties agree, minors have reached maturity enough to understand the nature, rights and responsibilities of marriage. Minors must agree, and marriage will not conflict with the best interests of both parties involved, and Sharia courts should be consulted. In determining this, the judge must summon minors, and he should contact the pediatrician to verify existing evidence forwarded to the court.

Although girls under the age of 18 are eligible to marry, the Malaysian Children Act 2001 defines children as "persons under the age of eighteen." The Committee on the Rights of the Child expressed its concern about the inconsistency between the definition of Islamic law and civilization concerning the minimum age for marriage. In 2007, the Committee on the Rights of the Child recommended that the Malaysian government "take all necessary measures to align the definition of the child, including the terminology used, in national legislation thus eliminating inconsistencies and contradictions" (*Women's Aid Organisation (WAO)*, 2012).

#### 4.3 Brunei Darussalam

The Muslim community in Brunei Darussalam is Syafi'i madzhab similar to neighbouring countries namely Malaysia and Singapore. The Shariah Court (Mahkamah Qadi) has traditionally dealt with Islamic civil matters (marriage, divorce, family

relations, community trust, living and so on) based on the Syafi'i madzhab. This system is maintained as a legal and political institution of the Sultan. Since 1898 there have been at least six changes in the legislation governing the religious life of the people of Brunei Darussalam, namely the laws of 1898, 1955, 1956, 1957, 1960, 1961 and 1967. This cursory suggests the dynamics of the life of Islamic law in Brunei Darussalam (Suchamdi, 2013).

It is worth noting that there were a *Revision Laws of Brunei* that renewed in 1984, the law was revised in exchange for the name of the Deed of Religious Affairs and the *Qadi Court* of the thrashing of 77, in the law the family law issue is regulated 29 Chapter under the rules *Marriage and Divorce* in section VI beginning with Articles 134-156 and the Maintenance of Dependent in section VII beginning with Articles 157-163 (Mudzhar and Nasution, 2003).

According to the Committee on the Rights of the Child released in February 2016, the Committee remains deeply concerned at a deficient minimum age of marriage, which is 14 under customary law, 15 for ethnic Chinese girls and not expressly defined for Muslims.

The minimum age of marriage is shallow, which is 14 years under customary marriage law, 15 years for Chinese and 16 years for Muslim. (United Nations, 2014) Agreement rejected by marriage in Bruneian law, marriage age is directly related to ethnicity and religion. Brunei's customary law allows marriage to take place at the age of 14, while Chinese girls can be married at the age of 15. No age is specified for Muslim marriage, but approval must be given by the guardian and registration officer (Young *et al.*, 2017).

#### 4.4 Bangladesh

According to the Childhood Restraint Act (1929), then amended in 1984, the minimum age is 18 years for women, and 21 for men and exceptions are not allowed. (Rumminger, Moussa and Anwar, 2011) The penalty for child marriage according to this act is imprisoned for a month or a fine up to *taka* 1000 or both. Despite national laws and international agreements, early marriage remains a widespread problem especially in developing countries such as Bangladesh. This is an obstacle to the health and future opportunities of millions of girls (Jisun, 2016).

However, marriages under this age apply and are not void in order to maintain family consistency and ensure that the child's legitimacy is not impeded.

However, parents and adults (bridegroom or bride) will be punished according to law, if any of them are under the age limit.

The Committee noted with concern that the State Party has one of the highest rates for marriage children worldwide, with 66% of girls married under the age of 18, often due to poverty, lack of personal security or difficulty verifying their age, and practice marriage continue to be imposed on the family of girls. The Committee further worries about the proposed new amendment to the law on child marriage which includes a clause enabling the marriage of girls at the age of 16 with the consent of a parent or court, thereby legalizing a child's marriage (UN Committee on the Elimination of Discrimination Against Women (CEDAW), 2016).

#### 4.5 Pakistan

In 1929, the Child Marriage Restraint Act established minimum marriage ages: 16 for girls and 18 for boys. The law also provides penalties for men over 21 who marry children or parents or guardians who "promote, allow or fail to prevent" such marriages. Courts are also empowered to issue an order against such marriages. (Haider, 2000) The action was also introduced criminal sanctions for contracting child marriages (Woodrow Wilson International Center for Scholars, 2005).

Efforts were made to reform marriage age in Pakistan, on Muslim Family Law and Child Marriage Act, Marriage stated that violations if parents marry their children under legal age (16-year-old daughter and boy 18 years). This indeed raises a very minimal age drastically. As a result, the current minimum age of marriage in Pakistan at the national level is 21 years. However, that does not mean all countries will marry on average at the age of 21 years because the previous average marriage age in Pakistan was 15 years (Nemat, 2006).

For more details on matters related to the minimum age of marriage shall be regulated in law No. 29 year 1929 on child marriage restrictions (Child Marriage Restraint Act) as amended by Ordinance No. 8 year 1961 MFLO (Muslim Family Law Ordinance) stipulates that a man over 18 years of marriage with a woman under the age of 16 shall be punished with a maximum imprisonment of one month or a fine of as high as one thousand *Rupees* or both, unless he has evidence to convince himself that what he does is not a marriage of a minor. Then if a person in the category of less than 18 years of marriage contracts with a minor, then the parent or guardian, who encouraged the marriage, or because

of their negligence, is punishable by a maximum imprisonment of one month, or the maximum fine one thousand *Rupees*, or both, with the exception that women are not sentenced to imprisonment. Although the prohibition of underage marriage has been imposed by providing threats to either the perpetrator or the parents or anyone encouraging the child's marriage, the marriage is not annulled and is still considered valid. As a result, marriage is still going on, and the execution of punishment tends to be low, so it does not cause deterrent effects to the public (Mudzhar, 2014). After discussing the distortion of marriage age in some Muslim-majority countries in Asia,

Table 1 shows a summary of the distortion of marriage age in several Muslim-majority countries in Asia Provisions for marriage below the minimum age (an underage marriage that has been enacted by the law in each country) can be carried out officially with discretion given by the judge (depending on judicial authorization) and parental consent (guardian). This can be seen in Indonesia, Malaysia and Brunei Darussalam, with marriages below the minimum age still permitted with various reasons in the form of maturity, very important (good reason or good faith), equality of status (*kafa'a*), results of medical evaluation (social investigation ) and benefits (needs) and with the agreement of the parties.

Table 1: Summary of the results of the literature on the distortion of marriage age in several Muslim countries

No	Country	Restriction of Normal Marriage Age (Constitution)		Marital Age Reduction (Not Normal)	Distortion of Marriage Age
		Boy	Girl		
1	Indonesia	19	16	Yes	Conditions for marriage are below the minimum age, depending on the court's decision and parental consent. That is, the law still provides a way out in Article 7 paragraph (2) in the case of irregularities may request dispensation to the court or other officials appointed by both their parent's men and women.
2	Malaysia	18	16	Yes	Teenage marriage before the age of the

No	Country	Restriction of Normal Marriage Age (Constitution)		Marital Age Reduction (Not Normal)	Distortion of Marriage Age
		Boy	Girl		
					law can be officially implemented with the discretion given by the judge. Only allowed if there is a legitimate benefit, the parties agree, minors have attained sufficient maturity to understand the nature, rights and responsibilities of marriage.
3	Brunei Darussalam	18	16	Yes	Marriages under a defined age can be made with court discretion in the form of a benefit or a need and with the agreement of the parties.
4	Bangladesh	21	18	Yes	This under-age marriage is valid and not void in order to maintain family consistency and ensure that the child's legitimacy is not impeded. However, parents and parties (groom or bride) will be punished according to the law if any of them are under the age of marriage.
5	Pakistan	18	16	Yes	The prohibition of underage marriage has been imposed by providing threats to either the perpetrator or the parents or anyone encouraging the child's marriage, but the marriage is not cancelled and is still considered valid.

There is a difference in Bangladesh and Pakistan that parents and parties (groom or bride) or anyone encouraging child marriages, will be sentenced to imprisonment or fines by the applicable law there if

any of those who are married are under the limit age of marriage. Although marriages under the stipulated age are valid, they are not cancelled and are still considered valid and not null in order to maintain family consistency and ensure that the child's validity is not hampered. As a result, there are still many underage marriages, and the execution of sentences tends to be low so that they do not cause a deterrent effect on the community.

The equality between Muslim countries that are compared lies in the existence of underage marriage distortions that have been enacted by the law in each country (married below the minimum age) is still permitted, but depends on the court authorization (judge) and permits granted parent/guardian if there is a valid reason for the occurrence of a marriage. While the difference lies in the lack of inclusion of penalties and fines in the laws of each Muslim country. Although there is a threat of punishment but marriage under age set by each country, it is not cancelled and is still considered valid with various reasons and opinions.

The controversy in responding to marriage law is a very natural thing, especially in some Muslim countries with diverse ethnicities and cultures as well as diverse beliefs or streams, so that some different understandings arise, only from what angle does it review. However, the law must be wise in responding to cases, especially regarding the minimum age limit for marriage and the form of deviation to marry below the minimum age that has been set.

By allowing a court to make exceptions to allow minors to get married, this can be called "false law" because the law cannot be applied, meaning that minors can be punished, but underage marriages remain and are valid Law. Although the minimum age of marriage in Islam is not about numbers, but try to put things in place, namely the quality of one's readiness to get married.

## 5 CONCLUSION

The existence of a marriage age limitation does not result in a person being obedient and obedient to marry based on the minimum age of marriage stipulated by the law of each Muslim majority country in Asia, but there are still distortions in the form of concessions to underage marriage with various requirements set. Among them, the reasons can be seen in Indonesia, Malaysia, Brunei Darussalam, Bangladesh and Pakistan with marriages below the minimum age still permitted with various

reasons in the form of maturity, very important (good reason or good faith), equality of status (kafa'a), evaluation results medical (social inquiry) and benefits (needs) and with the agreement of the parties. Although there are threats of punishment in countries (Bangladesh and Pakistan) for parents and / or parties (groom or bride) or anyone encouraging child marriage (those who are married are under the age of marriage), marriages under age determined by each country, not canceled and still considered valid with various reasons and opinions.

Regarding marriages under the age that are legally permissible should not be recognized as legal under the law, and there must be penalties for parents and guardians. It is vital to uphold the law and impose severe sanctions on those who have violated the minimum age of marriage. So that exception that allow minimum age marriage must be strictly limited.

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