

Conference Paper

Is Marriage Age Restriction Un-Islamic? (Comparative Study of Indonesia and Pakistan with Gender Perspective)

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ORCIDWahyuni Retnowulandari: <https://orcid.org/0000-0003-0644-1213>**Abstract.**

Like a recent epidemic, child marriages are prevalent not only in Indonesia but also in Pakistan. Even though both countries have ratified CEDAW and have laws and regulations governing the age of marriage. However, the BPS data (2020-2022) shows that the number of underage marriages are still high in several regions, with up to 34,000 applicants for marriage dispensation in 2022 in Indonesia. Likewise, the phenomenon also occurs in Pakistan, as its Human Rights Commission in Lahore in 2022 stated that at least 99 cases of child marriage were reported to them. Why is it difficult for the two countries to suppress the number of child marriages? Is it because the age limit for marriage is not Islamic? And what are the countermeasures from a gender perspective? Using the comparative method of laws in Indonesia and Pakistan from secondary sources, it can be concluded that these two countries are predominantly Muslim. Although the legal systems used in both countries are plural, where the law of marriage is still strong in Islamic law, and regarding the application of the marriage age, both the countries have attempted to have an age limit. Even though in the Islamic conception there is no age limit for marriage and only aqil and baliq are required, which according to most scholars stipulate that the age of aqil baliq is not the same as one another. This shows that the age limit for marriage is very Islamic because it is for the benefit of the child. Apart from that social culture poverty and promiscuity also contributed to the increase in the number of underage marriages. Therefore, it is necessary to fulfill the legal awareness of all parties, especially law enforcement in overcoming the negative impact on children's rights (especially girls).

Keywords: underage marriage, Islamic concept, children's rights, gender perspective, comparative law

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1. INTRODUCTION

Underage marriage has become a separate problem for Indonesia as well as in Pakistan. The two countries, which are predominantly Muslim, face more or less the same problems regarding underage marriages. Even though UNICEF Indonesia data shows a slow decline in underage marriages from year to year, the numbers still make Indonesia

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the country with the second highest rate of early marriages in Southeast Asia after Cambodia.[1] Throughout 2019 to 2020 there has indeed been a decrease of 0.6%, but this figure is still far from the target of decreasing to 8.74% in 2024.[2] The problem of early marriage in Indonesia was then exacerbated by an increase in early marriage during the Covid-19 pandemic. The PPPA Ministry noted that until June 2020 the number of child marriages had increased to twenty-four thousand during the pandemic. Map of the areas with the earliest marriages in Indonesia are in: first West Sulawesi 36.2%, second Central Kalimantan 35.5%, third Central Sulawesi 24.6%, fourth South Kalimantan 33.3%; fifth Southeast Sulawesi 31.7%; sixth Papua 31.6%. This can hinder the achievement of the Sustainable Development Goals (SDG) and will ultimately have an impact on the Human Development Index, namely in the dimensions of knowledge, longevity and healthy living, and standard of living. The SDGs consist of 17 goals and 169 targets covering social, economic and environmental aspects. The principles in the SDGs ensure that no one is left behind or 'no-one left behind' in sustainable development, including in gender equality and women's empowerment which is stated in the goal of SDGs 5.3 which reads, "Eliminate all harmful practices". [4]

In accordance with Law Number 1 of 1974 concerning Marriage, in fact the state has attempted to prevent underage marriages by increasing the age limit for marriage in the Civil Code, namely 15 years for women and 18 years for men into 19 years old for men and 16 year old for women. If it is less than the age limit, then the couple can be said to have entered into an underage marriage, and it is only permissible if the application for dispensation for marriage is granted by the Judge. Even now, this provision has been amended in 2019 in Law 16 of 2019, the minimum age for marriage is 19 years, for both men and women. However, the facts in the community actually found data for 2020 from the Directorate General of the Religious Courts that stated, there were as many as 34,000 requests for marriage dispensation. Of these, 97 percent received approval, and 60 percent of the applicants were children aged less than 18 years. So that related to underage marriage is an important thing to pay attention to in Indonesia considering that based on the presentation data of women aged 20-24 years who have lived together or were married before the age of 18, 2020-2022 are as follows:

This condition has made Indonesia ranked second after Cambodia according to UNICEF in Southeast Asia (2019-2020) with a high number of underage marriages. In addition, based on data from "Child Marriage Around The World. Girls Not Brides". (2018). The 20 countries with the highest number of underage marriages are:

From the data above Pakistan has more or less the same fate as Indonesia, with a total of 1,821,000 being above Indonesia, which amounts to 1,781,000 the number

Provinsi	Proporsi Perempuan Umur 20-24 Tahun		
	2020	2021	2022
ACEH	5.43	4.60	4.83
SUMATERA UTARA	5.95	4.82	3.80
SUMATERA BARAT	5.03	3.48	3.62
RIAU	9.19	5.55	5.79
JAMBI	14.03	10.67	9.91
SUMATERA SELATAN	13.44	12.24	11.42
BENGKULU	10.68	11.93	8.80
LAMPUNG	10.24	9.77	8.14
KEP. BANGKA BELITUNG	18.76	14.05	7.91
KEP. RIAU	7.31	2.89	4.87
DKI JAKARTA	1.45	4.68	2.07
JAWA BARAT	11.96	10.09	8.65
JAWA TENGAH	10.05	9.75	7.80
DI YOGYAKARTA	1.83	3.52	2.78
JAWA TIMUR	10.67	10.44	9.46
BANTEN	6.23	6.00	7.08
BAJU	8.79	5.06	3.66
NUSA TENGGARA BARAT	16.61	16.59	16.23
NUSA TENGGARA TIMUR	9.22	5.95	5.71
KALIMANTAN BARAT	17.14	13.84	12.84
KALIMANTAN TENGAH	16.35	15.47	14.72
KALIMANTAN SELATAN	16.24	15.30	10.53
KALIMANTAN TIMUR	11.79	8.64	7.22
KALIMANTAN UTARA	12.70	10.16	8.37
SULAWESI UTARA	14.01	13.56	8.82
SULAWESI TENGAH	14.89	12.51	12.65
SULAWESI SELATAN	11.25	9.25	9.33
SULAWESI TENGGARA	16.09	13.26	12.26
GORONTALO	14.73	11.64	13.65
SULAWESI BARAT	17.12	17.71	11.70
MALUKU	6.84	7.08	3.89
MALUKU UTARA	15.29	13.09	12.52
PAPUA BARAT	12.91	12.27	7.54
PAPUA	13.78	13.21	9.70
INDONESIA	10.35	9.23	8.06

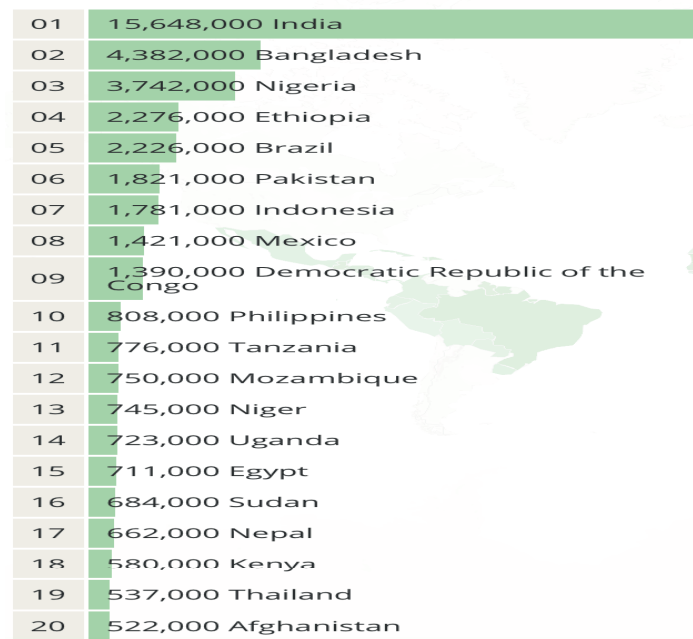
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Figure 1: Proportion of Women Aged 20-24 Years Who Were Married or Lived Together Before Age 18 by Province (Percent), 2020-2022.

of underage marriages. Coincidentally, Pakistan is the second largest Muslim-majority country after Indonesia. It is interesting to study why these two similar countries have high underage marriages, even though they are the same as in Indonesia. In Pakistan, the prevalence of child marriage has decreased in recent decades. the marriage bond[5] On average, it is estimated that at least 21% of women are married under the age of 18 and 3% are married under the age of 15.[6] Meanwhile, 3% of men married under the age of 18.[7]

In accordance with the title of this article, taking into account juxtaposing two countries where the majority of the population is Muslim, and with legal systems that are both plural but strong in Islamic law, the study of underage marriages is focused on Indonesia and Pakistan, where the number of underage marriages is recorded to be

Top 20 countries with the highest absolute numbers of child marriage*



Source <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/atlas/>

Figure 2:

high to get an answer, is it true that this is due to an un-Islamic marriage age limit? And at the end of this article, efforts to overcome it will be presented from a gender perspective (women’s rights).

The writing method used is normative including research on the principles/concept of underage marriage by means of comparative research on the laws between Indonesia and Pakistan to obtain similarities and differences as well as the relationship between legal systems, institutions and the concept of the limit of marriage age from secondary data that compares laws in Indonesia and Pakistan, along with the application of underage marriage laws in the two countries. Because the two countries both have formal laws that are still heavily influenced by Islamic law even though the legal systems are different.

This research aims to “problem solution” to the prevalence of underage marriages in each of these countries, taking into account one of the 5 (five) opinions of Romli Atmasasmita [8] citing the opinions of several foreign experts (March, Merryman, Kozolchyk, Yntema, Schlessinger A.E. Orucu) stated that the purpose of the study of comparative analysis of law is as a means to achieve a universal theory of law or a research tool to reach universal theory of law; Practice Of The Law. To achieve this goal the approach used is cross-cultural / cross-cultural as An Naim’s opinion in providing understanding to religious communities, with strong cultures such as in Indonesia and

Pakistan, needs to be adapted to the cultural context of each country, because only through legitimacy local culture, the concept of equal rights for girls from western countries is acceptable. The purpose of this research is different from other authors who discuss similar things, such as. Research from Sebelas Maret University Ismi Dwi Astuti Nurhaeni, M.Sc who wrote about “Child Marriage” with the aim of providing innovative suggestions to prevent Child Marriage: the Gender Study Program School of Strategic and Global Studies University of Indonesia and KPPPA with the title “Child Marriage In the Perspective of Islam, Catholicism, Protestantism, Buddhism, Hinduism, and Hindu Kaharingan”[9], which aims to study the views of religious leaders, religious educators, and community leaders from six religions in Indonesia and the public’s views on child marriage, Sonny Dewi Judiasih, et al [10], “Sustainable Development Goals And Elimination Of Children’s Marriage Practice In Indonesia” This research aims to analyze the implementation of the Sustainable Development Goals Program in the elimination of child marriage practices in Indonesia and to discover efforts to implement the Sustainable Development Goals Program by government officials in the elimination of child marriages in Pesisir Selatan District, West Sumatra Province; Siti Yuli Astuty [11], “Factors Causing the Occurrence of Young Marriage Among Adolescents in Tembung Village, Percut Sei Tuan District, Deli Serdang Regency”; which aims to find the main factors causing women to decide to marry early [12]. Djamilah, Reni Kartikawati, “The Impact of Child Marriage in Indonesia” Whose research objectives his study aims to identify the impact of economic, social, health, and culture of the problems of child marriage in eight (8) research areas, namely Jakarta, Semarang, Banyuwangi, Bandar Lampung, Sukabumi, West Nusa Tenggara, South Kalimantan, and South Sulawesi as well as provide policy recommendations related to sexual and reproductive health education for adolescents ; apart from that, there are other studies related to certain areas, such as research by Jamilah, Raudlatun “The Phenomenon of Child Marriage in Sumenep, Madura”, Subulah, Umi, Jannah, Faridatul. “Early Marriage and Its Implications for Family Life in Madurese Society (Legal and Gender Perspective)”.[14]; Nurhidayatulloh, N., & Marlina, L. “Underage Marriage from a Human Rights Perspective-Case Study in Bulungihit Village, Labuhan Batu, North Sumatra”.[15] As well as research on child marriage which emphasizes causal factors such as Sulaiman. “Domination of Traditions in Underage Marriages” [16]; and Muntamah, A. L., Latifiani, D., & Arifin, R. “Early marriage in Indonesia: Factors and the role of the government (Perspective of law enforcement and protection of children)” [17]; which emphasizes impacts such as Kartikawati’s research, Reni, “The Impact of Child Marriage in Indonesia [18]; Atikah Rahmi “Child Marriage: Legal Implications and Efforts to Prevent the Perspective of

Human Rights and Islamic Law” [19], Fadlyana, E., & Larasaty, S “Early marriage and its problems” [20]; Musfiroh, M. R. “Early Marriage and Child Protection Efforts in Indonesia [21].

1.1. Legal Age Limits for Marriage in Indonesia and Pakistan

Marriage is a contract that gives rise to the permissibility of a man and a woman to have sexual relations between husband and wife according to the demands of the human instinct in life, which results in the emergence of mutual rights and obligations between husband and wife. Marriage is a bond that creates a family as one of the elements in social and state life, which is governed by legal rules, both Islamic law and positive (state) law.

In Indonesia this has been regulated in Law no. 1 of 1974 concerning Marriage in article 1 states that, “marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Belief in the One Almighty God”. In addition, marriage is a way for men and/or women to form a family or household, it is one of the longest acts of worship in Islam and is something sacred and is expected to occur once in a lifetime in fulfilling their life needs.

According to the Compilation of Islamic Law in Article 2 and Article 3 explains that, “marriage according to Islamic law, namely a very strong contract or *miitsaaqan gholizhan* to obey Allah’s commands and carry them out is worship”.

It can be concluded that marriage aims to create a household life that is *sakinah*, *mawaddah*, and *rahmah*. With the aim of this marriage it is not possible if the marriage is carried out by those who are still children, whose nature is still to play and not be responsible in the household. Therefore, since the promulgation of state law Law no. 1 of 1974 concerning Marriage, in order to realize the purpose of marriage, one of the conditions is that the parties who carry out the marriage are mentally and physically mature and must be conscious or not forced, so the minimum age limit for marriage is set. if the marriage occurs under the age limit determined by law, the marriage is called an underage marriage.

Regarding the age limit for marriage in Indonesia, the initial planned age limit for a partner is stated in Article 7 paragraph (1) of the 1973 Marriage Draft Law. The bill states that the minimum age for marriage is 21 years for men and 18 years for women. However, because this bill sparked a debate that was prone to conflict, the discussion on this matter was finally postponed. The turmoil and potential for conflict ended after Law

Number 1 of 1974 concerning Marriage was promulgated. The minimum age standard for marriage as stated in Article 7 paragraph (1), was eventually reduced from 21 years to 19 years for men. The state stipulates that marriage regulations are only permitted if the man has reached the age of 19 and the woman has reached the age of 16.

However, in the latest regulations regarding marriage in Law no. 16 of 2019 in article 7 paragraph (1) explains that “marriage is permitted if the man has reached the age of 19 and the woman has reached the age of 19”.

This limitation is intended to maintain the health of husband and wife and offspring. From the existence of this age limit, it can be interpreted that the Marriage Law does not require the implementation of underage marriages that have been determined by law.

Therefore, underage marriages as stated in Article 7 are underage marriages. Although it is somewhat inconsistent with Law No. 16 of 2019 with the contents of other positive law articles in Indonesia, which regulates the age of the child in Article 47 paragraph (1) in Law no. 1 of 1974 explains that “children are those who have not reached the age of 18 years or have never been married, are under the authority of their parents as long as they are not revoked from their authority”. Meanwhile, in Law no. 23 of 2002 concerning Child Protection Article 1 states that “a child is someone who is not yet 18 years old and is categorized as a child, also including a child who is still in the womb”. However, at least positive law in Indonesia has always been mentioned regarding underage marriages in Law no. 23 of 2002 concerning Child Protection jo. Law No. 4 of 1979 concerning Child Welfare and BKKBN (National Family Planning Coordinating Agency).

Underage marriage is the practice of marriage carried out by a couple who one or both are still young in the contemporary view. However, underage marriage is an event that is considered normal by some people, but in principle, underage marriage brings a lot of harm and not a few ends in divorce. Underage marriages can be divided into two, namely first, marriages of minors to adults. secondly, same-age marriages between minors. This marriage practice is deemed necessary to obtain clear attention and regulation because it is related to the minimum age limit for marriage.

Even so, underage marriages can be legalized and legally valid through marriage dispensation institutions by submitting them to the Religious Courts. However, this marriage dispensation is not immediately given, there must be an element of emergency so that the marriage dispensation can be given. So that those who get permission from the court can get married and can register the marriage at the Office of Religious Affairs (KUA). This marriage dispensation is regulated in statutory regulations, namely Law No.

16 of 2019 concerning Marriage article 7 paragraph 2 states that “marriage dispensation can be given for very urgent reasons”. The reason for urgency cannot be just a claim, there must be sufficient supporting evidence in the form of a statement proving that the age of the bride and groom is still under the provisions of the law and a statement from a health worker supporting the parents’ statement that the marriage is very urgent to carry out. including witness testimony. This seems to have recently happened in Indonesia with data on the drastic increase in applications for marriage dispensations in several regions, due to the unawareness of the parties and parents of the adverse effects of underage marriages.

In the State of Pakistan, where the majority of the people are Muslims with various ethnic groups who all coexist peacefully with various religions in it, it is similar to Indonesia. Islam is recorded as a religion with 97% of the largest adherents in Pakistan with Sunni 77% and Shia 20%. The school of thought that is adhered to by the majority of Pakistan’s population is the Hanafi School, other schools such as the Shafi’i and Hambali are minority schools. Being a Muslim-majority country is caused by the large number of people from India who are Muslims moving to Pakistan.

Discussion regarding the minimum age limit for marriage in Pakistan before gaining its independence, all regulations regarding Islamic family law are regulated in The Muslim Personal Law (Shari’at) Application Act 1937 and Dissolution of Muslim Marriage Act 1939, but regarding underage marriages it is regulated in Child Marriage Restraint Act 1929 made by the government of India. The Indian government made its own law regarding the age limit for marriage, as explained in the Child Marriage Restraint Act 1929 Article 2 letter a which defines that a child is “a person who, if a man is under 21 years old and if a woman is under 18 years old”. As for Article 2 letter d, it states that a minor is “a person, whether male or female, under 18 years of age”. India applied a minimum age for marriage because many Indians at that time married when their children were at a young age. After setting a minimum age limit for marriage, India provides prison terms and fines for those who are responsible for the marriage. The punishment is stated in the Child Marriage Restraint Act 1929 in Article 4, Article 5 which explains that men over 21 years of age who marry children, as well as parents or anyone who allows child marriage to occur will receive a prison sentence of three months along with a fine of one thousand Rupees unless they can prove that the marriage is not underage/child marriage then the punishment can be avoided.

In Article 6 it states that if a marriage occurs in which both are still children or both are included in the Minor category, the parents or guardian will receive a prison sentence of three months along with a fine of one thousand Rupees. For imprisonment, no woman

may be punished by this law, this punishment is intended for men. Even at that time the Indian state did not hesitate to punish men under 21 years of age who married children with a prison sentence of 15 days along with a fine of one thousand Rupees as explained in Article 3 of the Child Marriage Restraint Act 1929. It is hoped that the Indian state can implement this punishment so that underage marriages do not happen again, at least child marriages can be reduced little by little.

After Pakistan became independent in 1947, the age limit for marriage used the same law as before Pakistan's independence which was regulated in the Child Marriage of Restraint Act 1929 / Law No. 19 of 1929 concerning the prohibition of child marriage which was later amended by Ordinance no. 8 of 1961 (MFLO).

In MFLO it is defined that a child (child) is someone under the age of 18 for boys and under 16 years for girls. Child marriage (underage marriage) is a marriage in which one of the bride or groom is a child as defined above. Then "minor" is defined as someone, both male and female, who is under 18 years of age. It seems that this law distinguishes between "child" and "minor". The changes made by Pakistan are due, in part, to the fact that the majority of its people adhere to the Hanafi School, so that the rules contained in the Hanafi School more or less affect the law in Pakistan itself, especially regarding Islamic family law. However, the penalty for men under the age specified by law to marry children as previously stated in Article 3 was abolished by the 1961 MFLO itself. So that the punishment is replaced by the parent or guardian as described in Article 6.

In Article 6 it states that "if there is a marriage where both are still children or are called in the Minor category, the parents or guardians or people responsible for the marriage, who encourage the occurrence of the marriage will be threatened with imprisonment for one month or a fine." one thousand Rupees or both, with the exception that women are not punished with imprisonment". If the underage marriage continues, even though the court has issued an order that the marriage cannot be carried out, the parents or guardians of the child marriage will be threatened with imprisonment of three months or a fine of one thousand Rupees or both. In addition, Pakistan does not recognize the name of a marriage dispensation and courts in Pakistan will not give the slightest permission regarding this underage marriage.

It can be concluded that Pakistan's efforts to prevent underage marriages from being overcome by law before and after independence have imposed criminal sanctions on the perpetrators. But the fact is that even though Pakistan applies criminal sanctions and fines to parents or guardians or anyone who encourages child marriage, the marriage itself is not annulled and is still considered valid. As a result, there are still child marriages that do this because the punishment is considered very light, so there is no deterrent

effect for them. This is because some people still believe that if a girl is not married as soon as possible it is a sin, moreover a girl has reached puberty then she must be married to get the best benefits from virginity and maintain her honor and this is driven by traditions in the country. So that the law is not applied by some Pakistani people even though the marriage is prohibited by law.

It is clear that the countries of Indonesia and Pakistan have tried to prevent underage marriages by issuing formal regulations, even in Pakistan, they do not provide opportunities for dispensation and provide criminal sanctions for violators. However, the fact is that the data on underage marriages in Pakistan and Indonesia itself are still carried out by many people. Is it because of Islam that is the reason this is still happening?

1.2. Marriage Age Limit According to Islamic Law

The Muslim community considers Islam as a way of life that they deeply adhere to. Islam is considered as their way of life, while traditions and culture do not affect the characteristics of Islam in an essential way. Indonesia and Pakistan are examples of countries that have made Islamic law a way of life in their family law. Indonesia is influenced by the Shafi'i School while Pakistan is influenced by the Hanafi School as a guide in legal issues, especially in the formation of laws related to Islamic Family Law.

Regarding the age limit for marriage in sharia/Islamic law itself there are no specific provisions or explanations regarding underage marriages, it's just that in the Qur'an it is stated that a person may enter into a marriage according to his maturity, as explained in the word of *Allah Subhanahu wa Ta'ala* (SWT) in Surah *An-Nisa'* verse 6:

Meaning: *“And test the orphans until they are old enough to marry. Then if in your opinion they are smart (good at maintaining wealth), then give them their wealth. And do not eat it (the orphan's wealth) beyond the limits of decency and (do not be) in a hurry (hand it over) before they grow up...”*

Based on this verse, Tafsir Ibnu Katsir explains that guardians are ordered to test orphans until they are old enough to marry. Sufficient age according to the *Mujtahid* in this verse is reaching the age of *Baligh* (puberty). As for someone who reaches the age of puberty according to the majority of scholars, that is marked by the release of semen, when he dreams in his sleep he sees something or experiences something that makes him secrete semen. Meanwhile, according to *fiqh* scholars, if the orphan has reached an age that makes him behave properly in terms of religion and wealth, then his guardians are not allowed to eat him without an urgent need and spend the wealth in a hurry. So it can be concluded that the age for someone to get married based on

Tafsir Ibn Kathir is reaching the age of puberty and adulthood. This is as the contents of the Al-Quran also indicate that for people who will carry out marriage must be ready and able, as in the Word of Allah SWT in the letter *An-Nuur* verse 32: Meaning: “*And marry those who are alone among you and those who are worthy (married) of your male slaves and your female slaves. If they are poor, Allah will enable them with His grace. And Allah is Extensive (the giver) and All-Knowing*”.

Therefore, Abdi Koro explains that, the age of women/girls who are allowed to marry is that they are of sound mind and are considered adults. It is clear that the age of a woman who is allowed to get married, if she has reached maturity means that a woman is able to manage her property and can make her choice of her own husband-to-be. An immature man or woman cannot determine his opinion in matters of marriage. So in principle the Islamic religion justifies marriage to be carried out only by adults, and underage children cannot enter into a bond. However, there is no specific stipulation on the age of minors, causing differences of opinion among the scholars.

However, there are scholars who are of the opinion that it is permissible for child marriages as are the opinions of Imam Maliki, Syafi'i, Hambali and Hanafi because they do not require *mumayyiz* (maturity of the prospective bride and groom). For them, aqil and puberty were enough because the Prophet himself married Aisha at a young age. However, there are two ways to determine whether the child has reached puberty or vice versa, namely *tabi'i* and *baligh* with age.

Tabi'i determination of puberty is a determination based on physical signs, if a female child has reached the puberty stage it is marked by the arrival of menstruation and a male child is marked by the discharge of semen. While determining *baligh* with age is determined if the physical stages do not appear in the body of the child. Therefore, the Fuqaha gave their opinion on the age stage of childhood, according to **Imam Hanafi, Shafi'i and Hambali**, a person is considered mature when he is **fifteen years old**, and according to **Imam Maliki**, someone is considered mature when he is **seventeen years old**.^[2] It is on the basis of this Fuqaha's opinion that laws in Indonesia and Pakistan stipulate the age limit for marriage in their respective countries.

This means that limiting the age of marriage has no problem with Islamic law, it is proven that even the priests of the classical schools of thought ultimately set a marriage age that is not just *baligh*. A logical thing because the purpose of marriage is the realization of *Sakinah, mawadah, warahmah* relationships in the family. In addition, the age limit for marriage is in accordance with the principle of marriage put forward by Prof. Mohammad Dawud Ali [26] among others, the fulfillment of the principle of voluntarism (there should be no coercion because in some cases underage marriages

are due to coercion by parents), the principle of consent, the principle of eternal marriage (generally underage marriages are easier for divorce to occur) and the principle of freedom to choose a partner and the principle of rejecting harm (preventing death due to childbirth/for health, stillbirth, cessation of education, cessation of play, increased divorce, and poverty).

1.3. Facts of underage marriage in Pakistan and Indonesia in a gender perspective

According to the Girls Not Brides report, underage marriages occur because they are driven by gender inequality in Pakistan i.e.

1. the belief that girls are inferior to boys, entrenched patriarchal norms encourage underage marriages for example, girls are born and raised to show caring and service attitudes towards men. Society believes the younger the girl, the easier it is for her to obey and serve her husband and in-laws.

2. If a girl is late getting married, she is often humiliated because it deviates from their tradition.

3. Family customs, marriages for boys and girls are often arranged by their parents. Moreover, inter-family or tribal marriages are still common in Pakistan itself. Only a third of girls aged 15-19 years married their first cousin on their father's side.

3. Traditional harmful practices, in Pakistan there are several country specific practices that approve child marriage. Swara, where girls are married off to settle disputes or debts, takes place in a village and is often sanctioned by a council of elders. Badal or Watta Satta, an agreement between two families to exchange female family members through marriage, where the girl is considered a low source of labour. Pait Likkhi, married girls before they were born or very young. The Pait Likkhi practice still occurs, the reason for this practice is to save the amount of dowry because with the age of the daughter the price of dowry increases.

4. Religion, some Muslim communities in Pakistan believe that their religion requires them to marry their daughters after they reach puberty. It also aims to protect a girl's honor.

5. Poverty, daughters in the family are considered a burden on the family because they do not have a major contribution to the family's finances. With that in mind, when their daughter gets married it is a way to reduce the economic pressure in their family.

6. Level of education, dropping out of school early is a cause and a consequence of underage marriages.

Based on the factors described in the report that make children in Pakistan volunteer themselves to do the marriage and sometimes force them to carry out a responsibility at their very young age and this is the result of the parents' lack of knowledge about underage marriages.

In 2017 the World Bank conducted research which estimated that if underage marriages in Pakistan ended, it could improve living standards and improve the nation's welfare. The World Bank and the International Center for Research on Women say underage marriages result in an economic loss of 6.3 billion dollars per year, because in the opinion of the two institutions underage marriage means ending a child's education at an early age and limiting his or her ability to earn higher incomes.

This is still ongoing in Pakistan, as reported by Deutsche Welle (DW) – detikNews Friday, 10 May 2019 10:06 WIB Islamabad – That the senate or upper house of Pakistan passed a bill (RUU) prohibiting underage marriages but faced fierce opposition because it could not get enough support in the lower house controlled by the Tehreek-e-Insaf party or the Pakistan Movement for Justice, PTI

However, the bill was hampered in the lower house, especially by factions from Islamic parties. In the lower house, even the ruling party rejected the idea of a bill limiting child marriage seeking to set a minimum age for marriage at 18. Meanwhile, PTI MP and human rights minister of Pakistan, Shireen Mazari endorsed the bill and called the law essential for the protection of girls, stating “No individual has sole authority in religious affairs,” referring to the University's fatwa. Al-Azhar Egypt on underage marriage Jamia tul Azhar has given a fatwa against child marriage. Therefore, the age limit is not something that is considered un-Islamic.

Likewise in Indonesia, based on the book “Married Young in Indonesia: voice, law and practice” which is a collection of studies related to the actual conditions at that time related to underage marriages in Indonesia showing a variety of influencing factors, namely:

1. The existence of “forced marriage” / traditional child marriage arranged by parents. From Regina Kalosa's field research which was carried out in the village of Curuq Hijau, West Java, where the population is of Sundanese ethnicity, Muslim and farmer's livelihood, marrying off their children due to economic constraints, where the girls there are forced to drop out of school. Because of their strong cultural and religious values they marry off their daughters underage.

- 2, Another research conducted by Nur l'anah in Ungaran, Semarang, Central Java, the factor causing underage marriage in this case was due to promiscuity where underage girls were forced to marry because of a pregnancy they didn't really want. As a result,

she dropped out of school, was alienated from social interactions, had to have a double burden taking care of the baby and her household and her parents-in-law's household because she lived in her parents-in-law's house.

3. According to previous research, Merariq marriage according to Awig-awig is a marriage tradition which has implications for underage marriages. However, in the Sasak community, Labuapi village, Lombok, from the results of Evi Sukmayeti's research, made progressive Awig-awig regulations.

4. Islamic boarding schools as centers of understanding religion are a factor influencing the increase in underage marriages as a result of religious beliefs as a response to text interpretation in a practical way or just as an assumption. Therefore, according to Taufiqurrohim and Unsiyah Siti Marhamah understanding of the text has the opportunity to influence people's beliefs about underage marriage based on doctrinal, cultural, and ethical constructions.

So, from these previous studies it can be concluded that the factors for the occurrence of underage marriages are very diverse, which can be due to the level of education/knowledge, the role of parents, social, cultural customs, economic conditions and religious interpretations. Therefore, the efforts that must be made in overcoming it must certainly be related to this matter.

1.4. Process of Suppressing Underage Marriage Rates with the Rights of Girls

In tackling underage marriages very much given by previous researchers, one of which is the recommendation from the Central Statistics Agency (BPS) and UNICEF to minimize early marriage in the form of; First, optimizing child protection through education. Second, provide an understanding regarding social and cultural norms for children that should be carried out by teachers, parents, religious leaders, close family, the environment and society more generally. Third, there is access to quality, easily accessible and low-cost education for children, especially girls. Fourth, government policies at the central and regional levels must prioritize and pay more attention to the prohibition of early marriage behavior in society. Fifth, strengthening research programs and conducting in-depth research specifically related to the behavior of early marriage to children.

Taking into account the factors that cause underage marriages, and the summary of the BPS and UNICEF recommendations above, it seems that this is also what has been proposed by many other researchers. Therefore, related to religion is not the

only consideration in cases of underage marriages. Because what must be taken into consideration is psychological, biological, economic preparation for the next life.

It is necessary to make a cultural change in knowledge about strengthening international women's rights in the country, outside the Western world (countries with a majority Muslim population including Pakistan) in general and Indonesia in particular. For this reason, it is necessary to carry out a cross-cultural approach, as is the opinion of An-Na'im; that in providing an understanding to people who are religious, with strong cultures such as those in Indonesia and Pakistan, it is necessary to adapt it to the Indonesian cultural context, as well as Pakistani culture.

An-Na'im's cross-cultural approach, carried out as its basic assumption is 'lack or insufficient cultural legitimacy of human rights standards (which) is one of the main causes of violations of these standards. Based on this assumption, it is important for 'internal and cross-cultural legitimacy so that human rights standards (the rights of girls) can be developed'. It should be emphasized that the above does not mean that efforts to strengthen universal values, such as women's rights, are unrealistic. In fact, see plurality as an opportunity, not as an obstacle, to root women's rights. More precisely identifying the dynamism of cultural values and norms, in the case of Indonesian adat, as an entry point to the process of legitimizing women's rights. Seeing this, it is important to identify various ways that can increase the legitimacy of women's rights culture in Indonesia and in Southeast Asia, so the women's rights agenda in Indonesia and Pakistan should focus on education reform, especially for girls.

This is because in essence education is a right of every citizen regardless of age and/or gender. The main priority of education is given to children and the government is obliged to provide and fulfill girls' rights to education. While the obligation of parents is to support and avoid various obstacles that can interfere with children in pursuing education, on the basis of several studies conducted in Bangladesh, Brunei, Chile, Ethiopia, Pakistan, Saudi Arabia, India, Jordan, Indonesia and several other countries, the main obstacles education for girls is child marriage and pregnancy. This is because after marriage, the culture of placing women in the household even revokes their right to education. Ironically, there are approximately 85% of girls in Indonesia who end their education due to the factor of marriage.

It is hoped that by instilling through the local culture women's rights can become part of education from an early age, it is hoped that the legal awareness of the community can change and in the end they become aware of the legal consequences and rights that are their right so that they can change the culture or anything that violates their rights.

2. CONCLUSION

Limiting the age of marriage does not violate Islamic law, because the Qur'an does not specifically regulate it, so the mujtahid scholars defined legal fiction from the definition of baliq to being fifteen years old, according to Imam Hanafi, Shafi'i and Hambali and seventeen years according to Imam Maliki. A logical thing because the purpose of marriage is the realization of Sakinah, mawadah, warahmah relationships in the family. In addition, the age limit for marriage is in accordance with the principles of Islamic marriage.

The recommended effort to overcome the problem of underage marriage is to use the An-Na'im cross-cultural approach, that is, by 'lack or insufficient cultural legitimacy of women's rights standards is one of the main causes of violations of these standards, it is necessary to apply cross-culture so that children's rights standards (women) can be developed'. In fact, seeing Indonesia's plurality in particular can be an opportunity, not an obstacle, to root women's rights, by increasing the cultural legitimacy of women's rights both in Indonesia and in Pakistan focusing on education reform especially for girls.

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