

Conference Paper

Marrying Unwanted Pregnant Girl Phenomenon in Indonesia: Is it in the Child's Best Interests?

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ORCIDElisabeth Sundari: <https://orcid.org/0000-0001-9196-4662>**Abstract.**

This research aims to examine the dynamic meaning of 'the best interests of the child' in Indonesia's phenomenon of marrying unwanted pregnant girls. Using normative legal research, the data compiled on the parent's reason and the judges' considerations in granting child marriage at Wonosari Religious Court in four latest years (2019-2022). The results indicate that parents and partners tend to propose child marriage dispensation rather than preventing it, in case the partner is already pregnant. The primary reasons of the parent, such as religious principles, protecting the fetus, and the family's good name, dominantly color the meaning of 'the best interest of the child'. These reasons were well supported by the judges.. This research contributes to the finding that external factors, such as local culture and religion, can influence the dynamic meaning of 'the best interests of the child.'

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1. INTRODUCTION

'The best interests of the child' has been established by the UN as one of the child's rights through General Assembly resolution 44/25 about the Convention on The Rights of The Child on November 19, 1989. Many countries have ratified, either in whole or with the reservations allowed for in the Convention. Indonesia ratified on September 5, 1990. However, in its implementation in various countries, the meaning of the principle is dynamic according to the situation and conditions of the country concerned, such as the results of Wei & Jingjie's research [1]. Its dynamic is also the case in Indonesia.

In 1974 through Law 1 of 1974 on Marriage, the meaning of 'the best interests of the child' was carried out by providing dispensation for children's marriage. According to UNICEF, child marriage is a marriage that occurs before the age of 18 [2],[3],[4]. Law 1 of 1974 can provide dispensation for forced marriages performed by brides who have not

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met the legal age requirement of 19 years and 16 years. Article 7 paragraph (2) of Law 1 of 1974 specifies that in case of a prospective groom under 19 years old and, or the bride under 16 years old, the parent can request a dispensation to the court or any other official. Law 16 of 2019 has further amended the age limit by determining that marriage is only permitted if the man and woman have reached the legal age of nineteen. This change implements the provisions of the Convention on the Elimination of all Forms of Discrimination Against Women 179, Article 16.1, which provides:

“States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and, in particular, shall ensure, based on equality of men and women: (a) The same right to enter into marriage;...”

With Law 1 of 1974, the Indonesian Government views marrying children, in certain circumstances, as an implementation of ‘the best interests of the child.’

Over time, the meaning has changed. Through Law 23 of 2002 on the Protection of Children, particularly in the provision of Article 26 paragraph (1), as supported by the Amending Law 35 of 2014, the parents have the obligation and responsibility to prevent child marriage. Here the principle of ‘the best interest of the child’ is implemented by avoiding child marriage. Since the legal policy has changed from ‘granting dispensation’ for child marriage to ‘preventing child marriage,’ the consequence is that anyone must prevent child marriage under any circumstances.

Child marriage prevention in Law 23 of 2002 and Law 35 of 2014 also aligns to the world trend led by UNICEF and UNFPA to prevent child marriage. UNICEF promotes child marriage prevention because it threatens their lives and health, robs girls of their childhood, makes them less likely to remain in school and more likely to experience domestic violence, and raises a determinant of depression in women [4]-[6]. Of that awful condition, UNICEF, in collaboration with UNFPA, then develop a global program to end child marriage [7]. Even some South Asia Countries (Afghanistan, Bangladesh, Bhutan, India, Nepal, and Pakistan) initiated to eliminate early and child marriage [8].

During the world’s efforts to prevent child marriage, it is shocking that child marriage in Indonesia and other countries recently continues to flourish. UNICEF in January 2023 noted that Indonesia is home to over 25 million child brides, with a 16% of prevalence of child marriage, which means the percentage of women aged 20 to 24 years who were first married or in union before age 18 (SDG indicator 5.3.1) [2], or, 1 in 6 young women were married. Based on data from the Indonesian Central Bureau of Statistics, this prevalence is up 4.79% from 11.21 percent in 2018 [9]. Rural has more numbers than urban. However, at the global level, Indonesia is still 19% below the prevalence of child

marriage in West and Central Africa (37%), East and Southern Africa (32%), South Asia (28%), Latin America and the Caribbean (21%), and Least Developed Countries (37%) [10]. The high rate of child marriage in Indonesia remains shocking because, based on the provisions of Law 23 of 2002 and Law 35 of 2014, parents should prevent child marriage. In reality, parents prefer to apply for dispensation rather than prevent it. From Save the Children Indonesia’s data, in 2020 [11], around 64.2 thousand cases of child marriage dispensation were approved by the courts (Religious Courts). As a rural area, the Wonosari District Religious Court also received many applications for dispensing child marriage by parents, as shown in Table 1.

TABLE 1: Child marriage dispensation data at the Wonosari Rural Area Religious Court.

Court	2022	2021	2020	2019
Wonosari Religious Court	170	218	239	107

Sources: Retrieved from https://sipp.pa-wonosari.go.id/index.php/detil_perkara.

The judge’s attitude supported the parents’ choice by granting a dispensation. From the data above, according to the Junior Legal Registrar of the Wonosari Religious Court, the judge granted almost all the applications. The most common reason for requesting dispensation to marry in 2022 at Wonosari Religious Court was that the brides were already pregnant. The figure reached 54% [12].

Grijns & Horri also found that handling teenage pregnancy by arranging child marriage was found elsewhere in Indonesia [13]. Although many countries commit to discouraging child marriage, it seems to be a common and causal relationship, which also occurs in other countries, such as Zambia [14], Yemen [3], Turkey [15], Niger, Chad, Mali, Bangladesh, Pakistan, India, and Syrian refugees [16]-[19]. The high number of child marriages further strengthens the evidence that child marriage rates in rural areas remain higher and confirms the headline of UNICEF that child marriage is a fundamental violation of human rights but is all too common [20],[21]. Countries continue to carry out programs, efforts, and campaigns to prevent early marriage, but child marriage continues with a modest decline.

The meaning of the child’s best interest in Indonesia is dynamic, especially dealing with child marriage. In its global research, UNICEF has found many factors interact to place a child at risk of marriage, including poverty, the perception that marriage will provide ‘protection,’ family honor, social norms, customary or religious laws that condone the practice, an inadequate legislative framework and the state of a country’s civil registration system [10]. As such, this research addresses the underlying factors surrounding child marriage in Indonesia, especially in rural areas. Parents prefer to apply

for a dispensation and the judge's consideration in granting it. It then examines whether marrying off a child with these factors serves the 'best interest of the child.' Since child marriage is a phenomenon despite UNICEF's prevention programs, the findings of this study are essential to justify which promotes the best interest of the child: granting a dispensation or preventing child marriage by declaring child marriage invalid as is the principle espoused in UNICEF Convention on the Elimination Against all Discrimination? The urgency of this research is that it needs a solid argument in choosing between not marrying off children who are pregnant before marriage and marrying them off as an implementation of the child's best interest.

2. METHODOLOGY/ MATERIALS

In answering the issues, the article starts by drawing the parents' reasons for applying for dispensation and the judge's consideration in granting the application by studying with a normative approach, namely from the principle of 'the best interest of the child.' To find sufficient data on the factors of child marriage dispensation, it uses a sample of rural areas from the judges of the Wonosari Religious Court for the last four years (2019-2022).

The research analyzes quantitatively and qualitatively. Quantitative analysis will use descriptive statistical methods. Qualitative analysis will interpret the data of factors in submitting dispensation applications with the principle of 'the best interest of the child.' The analysis results will answer the factors parents consider in marrying off their children and the attitude of judges in granting dispensation applications, and which of attitudes truly provide 'the best interest of the child': granting a dispensation or preventing child marriage.

3. RESULTS AND DISCUSSIONS

3.1. Child Marriage Policy: in International Law and Indonesia

Two International Conventions protect child marriage. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979 prefers to cover the right to protection from child marriage, as provided in article 16.2, which states:

“The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory”.

While the Convention on the Rights of the Child (CRC) –General Assembly resolution 44/25 of November 20, 1989- does not provide much protection in the context of child marriage, Article 3 establishes the principle that the best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.

There are no definitive rules that protecting from child marriage is implementing the child's best interest. UNICEF interprets protection from child marriage as implementing the principle of the child's best interests. Academicians such as Pandya & Bhanderi look that child marriage violates the 'Universal Declaration of Human Rights' in general and 'The Rights of a Child' in particular [22]. However, states members still fall into the situation between permitting or prohibiting child marriage [16],[22]. Moreover, the child marriage phenomenon continues to flourish.

Several factors lead to child marriage. It includes poverty, rural lifestyle, unwanted pregnancy, deep-rooted social and cultural customs, urbanization, number or age of siblings, changing cost of marriage, Laws or policies, illiteracy, inadequate educational opportunities, the inferior status of women in society, and poor law enforcement [15],[16],[22]-[24]. Research by Su, Dunifon, & Sassler showed that nonmarital pregnancies before the 20th century in the United States were relatively common [25]. Relatively common means that a nonmarital pregnancy in the United States is not something society considers shameful or taboo. This mindset is somewhat different for other countries. Religious values, such as Muslim, may influence it, for instance, in Pakistan, which looks at marriage as an essential institution, an important moral and social obligation [26]. Based on Q.s. al-Isra: 32, Sex between a man and a woman without a *mahram* is called infidelity, and infidelity is forbidden [27].

It is difficult to give a clear and whole meaning to flavoring 'the best interest of the child.' Wei & Jingjie, in their research, found that in China context, only gives several factors mean 'the best interest of the child': (1) the ascertainable feeling and wishes of the child concerned; (2) physical, emotional, and educational needs; (3) age, sex, background and any characteristics of him which the court considers relevant; (4) the likely effect on the child of any change in his circumstances; (5) the feelings and wishes of parents, and any other person towards him, and how capable each of his parents and any other person is of meeting his needs; (6) any other fact or circumstance the court considers relevant to "the child's best interests principle [1]. While März concludes, with the words of the United Nations Committee on the Rights of the Child, 'the best interests' principle requires the development of a rights- based approach, engaging all

actors, to secure the holistic physical, psychological, moral, and spiritual integrity of the child and promote his or her human dignity [28]. These are two factors in considering the best interest of the child: the internal factor of the child himself and the external factor.

A different or specific child-related issue gives a different meaning. Such as Wei & Jingjie [1], who pointed out the meaning of the 'the best interest' principle by proposing abolishing the conception of a "child born out of wedlock" and providing the mother as having custody of a breastfed infant after divorce in the field of family law in China. März includes the application of 'the best interests principle concerning pediatric healthcare children by ensuring that the child is received the best possible health care [28]. 'The best interests' principle does not provide a definitive solution to all ethical dilemmas. März found it in pediatric healthcare for child cases [28].

Indonesia has initiated to eliminate child marriage by reforming the age requirement for the groom before marriage. The age limits to marry in Law 1 of 1974 was amended into 19 years old for the spouse based on Constitution Court judgment No.30-74/PUU-XII/2014 as taking into enforcement. Nevertheless, as described previously, in a particular condition, Law 1 of 1974 provides dispensation for the marriage of children before reaching the age requirement.

A specific party can prevent the marriage if a marriage plan is not eligible, including the age requirement, under Article 13 of Act 1 of 1974. However, with the provision of the dispensation, even if there is a plan of marriage that does not meet the age requirement but has been given dispensation by the Court, the marriage may not be prevented. Likewise, as provided in Article 23 of Law 1 of 1974, even though it is not eligible, including the age requirement, it can cancel if the marriage has already happened. However, if the judges grant a dispensation, the marriage may not be canceled because it does not meet the age requirement.

Under the terms of Article 26 paragraph (1)c of Act 23 of 2002, parents are obliged to prevent child marriage. There is a contradiction of laws, the provisions of Article 7 (2) of Act 1 of 1974 on Marriage, which provides an opportunity to apply for dispensation in child marriage, with Article 26 paragraph (1) c of Act 23 of 2002 which obliged parents to prevent child-marriage.

1. *Rights For 'The Best Interests of The Child'*

The legal age limit for marriage (especially 16 years for women) violated Convention on the Rights of the Child (CRC) 1989, as ratified by The Indonesian President Decision 36 of 1990, especially Article 3, which stated: "1. In all actions concerning

children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the child's best interests shall be a primary consideration. The authority of parents to request dispensation of their child-marriage as stipulated in Article 7 paragraph (2) of Act 1 of 1974 also violated Article 23 paragraph (3) of the International Covenant on Civil and Political Rights (ICCPR) adopted by the General Assembly of the United Nations on December 19, 1966 and ratified by Indonesian Government through Law 12 of 2005.

Rights of the child's best interest does not mean that what is expressed by the child is best for the child. There are some limits to rights in the best interest of the child, namely:

- (a) A child's right to express his view freely in all matters affecting their life is given due weight following the age and maturity of the child and with the values of morality and propriety which is promulgated in Article 12 of the Convention on the Rights of the Child (CRC), also Article 10 of Law 23 of 2002.
- (b) Every child has the right to participate pretty by human dignity, as set in Article 4 of Act 23 of 2002, under Article 31 of CRC. There is no standard on the definition of fair participation. It is needed to be studied to make the definition clear.

3.2. Deviation of principle by the judge in selecting contradictory provisions

There is a contradiction or antinomy in developing the rule of law concerning child marriage in Indonesia.

- (a) On one side, child marriage "can" be done through the dispensation as provided in Law 1 of 1974. On the other side, it must be prevented as provided in Law 23 of 2002.
- (b) On the one side, prevention or cancellation of child marriage, as set in Articles 13 and 22 of Law 1 of 1974, is a right. On the other hand, preventing child marriage, as set in Article 26 paragraph (1)c Law 23 of 2002, is an obligation.

This development of child-marriage laws in Indonesia, which are contradictory, will then confuse the parents and judges. Law 1 of 1974 itself contains two or more contradictory Articles. Article 7, paragraph 2 provides the right of parents to propose the

child-marriage dispensation if they agree. While Article 13 of Act 1 of 1974 provides the right to prevent marriage, which needs to meet the requirements. Act 1 of 1974 gives two options relating to child marriage: 1) can be proposed for dispensation (Article 7 paragraph 2), or 2) can be prevented (Article 13). Both are the right that can be taken: propose to dispensation, or propose to prevent. In Wonosari, as described in Table 1, the parents tend to refrain from preventing but propose child-marriage dispensation.

Judges are law enforcement officers, the main task of the judge is to receive, examine, hear, and resolve cases based on law and justice [29]. The judge's decision describes a judge's attitude in interpreting the law and justice. Following the principle of objectivity of justice, based on Article 53, paragraph 2 of Act 48 of 2009, the judge should appropriately consider the legal basis and justice in imposing the determination and decision. Even, Article 178 paragraph (1) of *Het Herziene Indonesisch Reglement* - as the Indonesian Civil Procedure- [30] promulgates that the judge must make legal considerations that the parties may not raise in deciding a civil case. In the deliberation phase, each judge shall submit an opinion that will become an integral part of the decision. Article 14, paragraph (2) and (3) Law 48 of 2009 gives the right of the judge to submit different opinions that must be noted in the decision. The procedure will be applied even when facing a contradiction of rules that may raise a different attitude among the judges when they should make the decision.

There is a standard of principle to choose which one of the contradictory rules should be taken. The contradictory rules are often referred to as antinomy [31]. In the legal field, antinomy means two rules of law in value or philosophical conflict, not logically [32]. The contradiction between Law 1 of 1974 and Law 23 of 2002 in developing child-marriage law means a contradiction in value or philosophy.

To choose which one of the rules should be taken in terms of the contrary, the judges may use one of three principles, namely: 1) *Lex specialis derogat legi generalis*, which means that if there are two laws in the same level, set the same thing but conflicting, more specific law in nature override the general law; 2) *Lex posterior derogat legi inferiori*, which means that if there are two laws at the same level, set the same thing but conflicting, recent legislation overrides previous legislation.

In examining the application for a child marriage license, the judge should use the latest regulation, Law 23 of 2002, based on the *lex posterior de rogaat legi priori*. Law 23 of 2002 obliges parents to prevent child marriage. However, From the data in Table 1 and according to the Junior Legal Registrar of the Wonosari Religious Court, almost all of them were granted by the judge. As a result, the judge deviated from the principle of choosing between the two contradictory legal provisions by applying the old provision,

Law 1 of 1974, that gives the parents the right to apply for dispensation of a child's marriage.

According to the Junior Legal Registrar of the Wonosari Religious Court, the most common reason for requesting dispensation to marry in 2022 at PA Wonosari was because the bride-to-be was already pregnant; the figure even reached 54% [12]. Partners had been dating long, had intercourse, and got pregnant. Partners and parents of both groom and bride in their application argued that marriage was the best way to cover the shame of pregnancy, especially from an Islamic law point of view, namely the principle of *fiqhiyah* as implied in Article 53 paragraph (2) of Islamic Law Compilation: resist damage precedence than attractive benefit, as well as and *Q.s. al-Isra: 32* of *Al Qur'an* Islamic Bible provides that sex between a man and a woman without a *mahram* is called infidelity, and infidelity is forbidden.

On one side, the child-marriage will save the status of those who have already been pregnant, and the fetus will be a legitimate child. The relationship then also becomes legal. Based on Islamic Law Compilation principles, women and men are forbidden to live together without marriage. The judge considered this situation to grant the request for dispensation. The judge's decision in international law is contrary to Article 16.2 of CEDAW 1979 and Article 16.1 of The Universal Declaration of Human Rights, which tend to prohibit child marriage.

According to the Chairman of Wonosari Religious Court, the judge granted dispensation and used Article 7 Paragraph 2 of Law 1 of 1974 (not Law 23 of 2002) because the partners and their parents agreed to ask for dispensation despite preventing as they could choose based on Article 13 of Law 1 of 1974. Furthermore, according to the Chairman of Wonosari Religious Court, the judge would apply the Article on Prevention in Law 1 of 1974 and the Child Protection Law in case the parent asked for prevention.

On one side, what the judges did by applying Article 7 Paragraph 2 of Law 1 of 1974 is not wrong. *First*, the law is still valid even if there is a new regulation as provided in Child Protection Law which is contradictory. *Second*, the parents prefer to apply for dispensation as their right as stipulated in Article 7 Paragraph 2 rather than preventing it as stipulated in Article 13 of Law 1 of 1974. On the other hand, it can be debated, especially with the provisions of Article 26 paragraph (1)c of the Child Protection Law. The provisions of the dispensation of Law 1 of 1974 is *anvullend recht*, as using the term "may" apply to dispensation. The term "may" is interpreted as a right or arbitrary. While the provisions of Article 26 paragraph (1)c of the Child Protection Act is *dwingend recht*, obliging, from the formula "shall to" prevent. The term "shall to" can be interpreted to be complied with and should be prevented. Unfortunately, there is no strict sanction for

parents who violate the provisions of Article 26 paragraph (1) c. Article 26 paragraph (1)c of the Child Protection Act can be said to the development of law to change the rights to prevent (child) marriage as stipulated in Article 13 of Law 1 of 1974 into the obligation to prevent.

Theoretically, obliging provisions override purely arbitrary provisions. It means, in case there is a request for child-marriage dispensation, judges logically shall not accept (*niet onvankelijke verklaard*) because it is opposed to the obliging provision (“shall to prevent child-marriage”) as adopted by the Child Protection Act. Judges should apply the Child Protection Act, based on the *lex posterior derogat legi priori* principle, because it is the latest provision concerning child marriage. Judges should apply the Child Protection Act, based on the *lex specialis derogat legi generalis* principle, because it is a more specific provision (child protection relating to marriage) than Law 1 of 1974 (provides marriage in general).

1. *Marrying Unwanted Pregnant Girls from The Perspective of ‘Best Interests of The Child.’*

Considering the facts that the judge established the child-marriage dispensation, even though the developed law (Law 23 of 2002) provides to prevent it, further discussion may be raised, whether the consideration and the legal basis used by the judge in granting child-marriage dispensation is appropriate to the rights for the best interests for the child.

Interestingly, the judges did not consider Law 23 of 2002 as the basis for deciding the case. They emphasized the facts (that the child was already pregnant), the living law of the Wonosari community, Islamic law, and the agreement of all involved parties, including the partners, and parents, before granting child-marriage dispensation. The decision of the judge to invite both parents and couples for confirmation was the appropriate step to prevent future conflicts. For example, the parents of the girl applied for dispensation, but it turns out the parents of the boy wanted to prevent it or wanted to cancel. Through the confirmation from both the couple’ parents, it can be drawn that they agreed to propose dispensation rather than prevent or cancel. The fact that the judges invited both parents of the spouse supports Wei & Jingjie’s research in China context that one of the factors to mean ‘the best interest of the child’ is the feelings and wishes of parents. At this moment, the external factor dominated in considering ‘the child’s best interest.’

Since the judges even consider the ‘the best interest of the child’ principle, as provided in Article 2b of the Child Protection Act and Article 3 paragraph 2 of the

Convention on the Rights of Child, the judge's consideration in granting child-marriage dispensation ought to be discussed now.

Article 3, paragraph (1) Convention on the Rights of Child 1989 stated: In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration. That provision is adopted by the Children Protection Law 23 of 2002. Based on these provisions, when judges examine and decide upon the child-marriage dispensation, the primary consideration should be "in the best interests of the child."

It is difficult to decide whether marrying pregnant girls meets 'the child's best interest.' The answers can differ, depending on each point of view of the "interest". In case of the interest to save the fetus from having a legitimate status when a child is born, as well as covering the "disgrace" pregnant, then it meets with the best interests of the child principle to save his good name, family name, and save the legal status of the fetus. On the other hand, in case of the interest in the future life of the child- marriage, it will trap them into an unideal marriage since both spouses are still young, merely to cover the "disgrace" pregnant, and not based on love and approval intact. However, in the trial, they confirmed they loved each other voluntarily and were ready to be responsible. That unideal marriage can ultimately lead to divorce because of economic reasons and irresponsible reasons for the lack of maturity. From this point of view, marrying the child will contradict the principle of "the best interests of the child."

With these two options, both equally not such a good idea. If the child is already pregnant, then marrying them will save their good name and protection for the baby. The trap into an unideal marriage situation has not happened yet in the beginning and still can be avoided with guidance, economic support, as well as assistance from their parents until their marriage life goes "normally." If the child is dating but is not already pregnant, delaying marriage until the child is eligible for marriage would avoid being trapped in an unideal marriage.

However, granting child-marriage dispensation in case the child has been already pregnant still meets with "the best interest of the child" principle, even not entirely appropriate. In case the child has already been pregnant and is not to be married to await the fulfillment of the age requirement, it would put the child in "disgrace" due to pregnancy or child birth out of marriage. Granting child-marriage dispensation becomes a proper adjudication because it still gives a chance to make the marriage ideal or expected based on the parents' guidance, support, and assistance. It also meets with some limits of rights of the best interest of the child, as stated in Article 12

of the Convention on Rights of the Child (CRC) as well as Article 10 of Act 23 of 2002, namely: child's right to express his view freely in all matters affecting their life being given due weight under the age and maturity of the child and with the values of morality and propriety. It will also meet in the best interest of the child principal. That analysis can explain what März concludes: 'The best interest principle shall engage all actors to secure the child's holistic physical, psychological, moral, and spiritual integrity and promote his or her human dignity—the parents.

4. CONCLUSION AND RECOMMENDATION

Based on the discussion conducted in the previous chapter, it can be concluded that the parent and the partner tend to propose the child marriage dispensation than prevent the marriage in case the partner is already pregnant. Even though not entirely appropriate, granting child-marriage dispensation in case the child has already been pregnant still meets the "the best interest of the child" principle, because it still gives a chance to make the marriage ideal or expected based on the parents' guidance, support, and assistance. The outside interests, such as religious principles, protecting the fetus, and the family's good name, dominantly color the meaning of 'the best interest of the child' rather than the personal interest of the child him/herself.

In addition to legal adjustments, it recommends that several social efforts, such as educational reform and extensive policing powers, will be required.

References

- [1] Wei C, Jingjie X. "A commentary on the principle of the child's best interests—the weakness and improvement of marriage and family law" *Front Law China*. 2018;08(1):51–64. DOI <https://doi.org/10.1007/s11463-008-0004-x>.
- [2] UNICEF. "Child marriage country profile: Indonesia". [Unicef.org. https://data.unicef.org/country/idn/](https://data.unicef.org/country/idn/) (accessed January 8, 2022).
- [3] Voinarevich O. Esq, "A fairy tale interrupted: The long-term impacts of child marriage in yemen and the necessary adjustments to both local and international laws to stop the practice and to protect voiceless child brides". *Rutgers Race and The Law Review*. 2015;16(2):203-217. [Online] Available at <https://www.proquest.com/scholarly-journals/fairy-tale-interrupted-long-term-impacts-child/docview/1771223703/se-2>
- [4] UNICEF. "Child protection: Child marriage", [Unicef.org. January 23, 2021. https://www.unicef.org/protection/child-marriage](https://www.unicef.org/protection/child-marriage) (Accessed Jnauy 23, 2021).

- [5] Yount KM, Crandall A, Cheong YF, Osypuk TL, Bates LM, Naved RT, et al. Child marriage and intimate partner violence in rural Bangladesh: A longitudinal multilevel analysis. *Demography*. 2016 Dec;53(6):1821–52.
- [6] Bhutto ZH. in Collaborative writing, “Child marriage as a determinant of depression in women”, *J Behav Sci*. 2013;23(1):93-101. [Online]. Available at <https://www.thefreelibrary.com/Child+Marriage+as+a+Determinant+of+Depression+in+Women.-a0343208857>.
- [7] UNICEF. “Child protection: UNFPA-UNICEF global programme to end child marriage”, [Unicef.org. https://www.unicef.org/protection/unfpa-unicef-global-programme-end-child-marriage](https://www.unicef.org/protection/unfpa-unicef-global-programme-end-child-marriage). (accessed June 5, 2022).
- [8] UNFPA and UNICEF. “ Mapping of child marriage initiatives in South Asia: Research Report”, 2016: 10–34, Accessed January 17, 2022 [online]. Available <https://www.unicef.org/rosa/media/1376/file/Mapping%20of%20Child%20Marriage%20Initiatives%20in%20South%20Asia%20.pdf>
- [9] Hakiki G. In collaborative writing, prevention of child marriage, Jakarta: Badan Pusat Statistik, Kementrian BPN/BAPPENAS, UNICEF, PUSKAPA. 2020. [online]. Available <https://www.unicef.org/indonesia/sites/unicef.org/indonesia/files/2020-06/Prevention-of-Child-Marriage-Report-2020.pdf>
- [10] UNICEF. “Child marriage: Child marriage is a violation of human rights, but is all too common”, [Unicef.org. https://data.unicef.org/topic/child-protection/child-marriage/](https://data.unicef.org/topic/child-protection/child-marriage/) (Accessed May 21, 2022).
- [11] Save The Children. “Annual Report 2020 Indonesia”, Accessed January 13, 2022 [online]. Available at <https://savethechildren.or.id/wp-content/uploads/2021/06/SCID-Annual-Report-2020.pdf>
- [12] Pengadilan Agama Wonosari. “Perkawinan Usia Dini di Kabupaten Gunung Kidul mengalami Penurunan”, [pa-wonosari.go.id](https://www.pa-wonosari.go.id). Available <https://www.pa-wonosari.go.id/berita/berita-terkini/505-perkawinan-usia-dini-di-kabupaten-gunungkidul-alami-penurunan-18-januari-2023>. (Accessed January 18, 2023).
- [13] Grijns M, Horii H. Child marriage in a village in West Java (Indonesia): Compromises between legal obligations and religious concerns. *Asian J Law Soc*. 2018;5(2):453–66.
- [14] Menon JA. in collaborative writing, “Ring’ your future, without changing a diaper – Can preventing teenage pregnancy address child marriage in Zambia?” *PLoS ONE*. 2018;13(10):1-7. Art.no.e0205523. <https://doi.org/10.1371/journal.pone.0205523>.. p.1.
- [15] Malatyalı MK. in collaborative writing, “A social dominance theory perspective on attitudes toward girl child marriages in Turkey: The legitimizing role of ambivalent

- sexism". *Sex Roles*. 2017;77(9-10):687–96.
- [16] Psaki S. Addressing child marriage and adolescent pregnancy as barriers to gender parity and equality in education. *Prospects*. 2016;46(1):109–29.
- [17] Nasreen S. in collaborative writing, "Child Marriage: Changing Trends in Pakistan". *New Horizons*. 2018;12(1):85-98. [online]. Available at <http://greenwichjournals.com/index.php/NH/article/view/369>
- [18] Kamal SM, Hassan CH, Alam GM, Ying Y. Child marriage in Bangladesh: Trends and determinants. *J Biosoc Sci*. 2015 Jan;47(1):120–39.
- [19] Swan G. Child marriage in Jordan: Breaking the cycle. *Forced Migr Rev*. 2018;57:43–4. Available from: <https://www.fmreview.org/syria2018/swan>
- [20] UNICEF. "UNICEF Data: Child marriage". *Unicef.org*. Available <https://data.unicef.org/topic/child-protection/child-marriage/> (accessed October 22, 2019).
- [21] McGovern T, Baumont M, Fowler R, Parisi V, Haerizadeh S, Williams E, et al. McGovern, in collaborative writing, "Association between plural legal systems and sexual and reproductive health outcomes for women and girls in Nigeria: A state-level ecological study". *PLoS One*. 2019;14(10):e0223455.
- [22] Pandya YP, Bhandari DJ. An epidemiological study of child marriages in a rural community of Gujarat. *Indian J Community Med*. 2015;40(4):246–51.
- [23] Naveed S, Butt KM. "Causes and consequences of child marriages in South Asia: Pakistan's Perspective". *South Asian Studies A Research Journal of South Asian Studies*. 2015;30(2):161–175. [Online] Available at <http://journals.pu.edu.pk/journals/index.php/IJSAS/article/view/3011>
- [24] Polyakova M. Child marriage and female educational attainment: A complex relationship. *Atl Econ J*. 2018;46(4):475–6.
- [25] Su JH, Dunifon R, Sassler S. Better for Baby? The retreat from mid-pregnancy marriage and implications for parenting and child well-being. *Demography*. 2015 Aug;52(4):1167–94.
- [26] Critelli FH. Between law and custom: Women, family law and marriage in Pakistan. *J Comp Fam Stud*. 2012;43(5):673–93. Available from: <https://www.jstor.org/stable/23267840>
- [27] Junawaroh. "Wanita Hamil di Luar Nikah Perspektif Hukum Islam (Studi Hukum Menikahi, Mentalaq, dan Masa Iddah)". *Syaksia Jurnal Hukum Perdata Islam*. 2020;21(22):331–56.
- [28] März JW. What does the convention on the rights of the Child's best interests principle mean for pediatric healthcare? *Eur J Pediatr*. 2022;181:3805–16.

- [29] Mertokusumo S. The Indonesia' civil procedures (Hukum Acara Perdata Indonesia). Yogyakarta: Universitas Atma Jaya Yogyakarta Press; 2010.
- [30] Mr.R.Tresna, Comentary on HIR (Komentar Atas HIR). Jakarta: Pradnya Paramita; 1989.
- [31] Mish C. F., et al., Webster's Ninth New Collegiate Dictionary. Massachusetts: Meriam Webster-Inc; 1991.
- [32] Manullang EF. Menggapai Hukum Berkeadilan: Tinjauan Hukum Kodrat dan Antinomi Nilai. Jakarta: PT Kompas Media Nusantara; 2007.