



## RESISTANCE TO CHILD MARRIAGE PREVENTION IN INDONESIA AND MALAYSIA

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**Abstrak:** Mengakhiri perkawinan anak adalah strategi global yang bertujuan untuk melindungi hak-hak anak. Namun, upaya ini seringkali menghadapi resistensi dalam beberapa masyarakat. Studi ini bertujuan untuk mengeksplorasi resistensi yang terjadi dalam masyarakat terhadap upaya pencegahan perkawinan anak di Indonesia dan Malaysia. Pendekatan hukum komparatif digunakan dalam studi ini dengan membandingkan peraturan perundang-undangan di kedua negara dan merujuk pada respon masyarakat terhadapnya. Dalam penelitian ini, tiga faktor sosial yang menjadi penyebab utama penolakan terhadap pencegahan perkawinan anak di Indonesia dan Malaysia diidentifikasi. Faktor-faktor ini meliputi desakralisasi hukum, kegagalan negosiasi antara syariah dan budaya hukum, serta adanya disfungsi sinergis antara pemerintah, masyarakat, dan tokoh agama. Pemahaman yang mendalam tentang faktor-faktor ini sangat penting untuk merumuskan strategi yang lebih efektif dalam melindungi anak-anak dari praktik perkawinan anak yang merugikan.

**Kata kunci:** perlawanan; pencegahan perkawinan anak; Indonesia; Malaysia; masalah

**Abstrak:** Ending child marriage is a global strategy to protect children's rights. However, in some places, this agenda faces resistance. This study explores public resistance to child marriage prevention efforts in Indonesia and Malaysia. This study employs a comparative legal approach between Indonesia and Malaysia by comparing laws and regulations in both countries and the public response to them. It is found that three social factors cause the resistance against child marriage prevention in Indonesia and Malaysia. These are the desacralization of law; failure of negotiation between sharia and legal culture; and the synergy disfunction between the government, society and religious leaders. A deep understanding of these factors is important to formulate a more effective strategy to protect children from harmful child marriage practices.

**Keywords:** resistance; prevention of child marriage; Indonesia; Malaysia; *maslahat*

## Introduction

Ending child marriage is one of UNICEF's global agenda. However, it faces public resistance, including in some areas in Indonesia and Malaysia (Darmawan et al., 2022; Awal & Samuri, 2018; UNICEF, 2021). The national strategy implemented by the Indonesian government and the Malaysian kingdom encountered many obstacles (Bappenas, 2020; KPWKM, 2020). During the COVID-19 pandemic, courts handled more applications for early marriage dispensation in Indonesia and Malaysia. In Indonesia, the applications for marriage dispensation increased from 23,145 in 2019 to 63,382 in 2020. Meanwhile, 11,424 Muslims petitioned for early marriages from 2008 to 2018 in the Sharia Courts of Malaysia. The Federal Government Administration of Malaysia recorded 5,409 early marriages by non-Muslims from 2008 to 2018. Besides, Majlis Adat Istiadat Sarawak (MAIS) reports that 5,000 underage couples married between 2008 and 2018 (Ismail, 2018). During the COVID-19 pandemic, families were vulnerable to economic difficulties. Extramarital pregnancy became parents' concern as schools closed to prevent the disease from spreading.

Various studies have been conducted to address child marriage issues nationally and globally. These studies include studies by Irani & Roudsari (2019), Nour (2009), and Svanemyr et al. (2012). Those studies insist that child marriage violates human rights, affecting mostly girls. Child marriage practices have been most prominent in South Asia and South East Asia, where people consider child marriage common practices. Child marriage is highly potential to be a gender-based violence instrument. These kinds of research were also conducted by Harvey et al. (2022), Irani & Roudsari (2019), and Naveed & Butt (2020). Specifically in Indonesia, most academic studies on child marriage were conducted regionally. This is also true for Malaysia. Most academic studies fail to explain the issue in the national context (Grijns & Horii, 2018; Kohno et al., 2020; Bahari et al., 2021; Kohno et al., 2019; dan Awal & Samuri, 2018).

This study aims to complement previous studies using a different approach. This study uses a comparative approach between Indonesia and Malaysia to address three issues hampering child marriage prevention. These three issues are the desacralization of marriage law; the difficult negotiation between sharia and legal culture; and the

synergy disfunction between the governments, society, and community leaders. These three factors, in turn, cause resistance to child marriage prevention in the two countries. Indonesia and Malaysia.

### **The Desacralization of the Law on the Prevention of Child Marriage**

In Indonesia and Malaysia, the first cause of resistance to child marriage prevention is the desacralization of the marriage law, which are Marriage Law No. 19 of 2019 in Indonesia and Sharia Family Law in Malaysia (Mohd & Kadir, 2019; Wicaksono, 2021). Two factors cause the desacralization of laws in Indonesia. First, the law is considered not living law (Anda, 2018; Basri et al., 2022; Harisudin, 2021) and second, there has been a lack of public compliance with the law (Anam & Nelli, 2021; Arrisman, 2018; Michelle et al., 2020; Torahiya, 2018). In Malaysia, desacralization occurs due to legal differences in the minimum age limit in Marriage Law for Muslims and non-Muslims and the strong customary norms (Hassim et al., 2020; Nik Wajis et al., 2020).

In Indonesia, some judges in the Religious Courts consider the state's stipulation of legal marriage age to neglect the existing living law. This, in turn, leads to the desacralization of Marriage Law and the resistance to child marriage prevention. A judge in the High Court of Palangkaraya proposed a similar argument stating that the increase in marriage dispensation applications permits early marriage because the people adhere to the living law. This argument indicates the need to consider living law and cultural contexts in the lawmaking by the state (Handayani, 2020; Natsif, 2018; Yasin, 2016).

The negligence of that factor makes the law weak and powerless in addressing child marriage issues. According to Fauzan, a judge from Palangkaraya Religious Court, progressive law does not always rely on the substantial formulation of the law. Therefore, he argues that the judges granting marriage dispensation conduct *ijtihad* based on the principle of children's best interest (Fauzan, 2022). In this case, lawmakers should understand the cultures, norms, and values influencing child marriage practices. Considering those factors, the laws and regulations will be more sensitive and effective in preventing child marriage.

Nonetheless, those considerations should not legitimize child marriage as it violates human rights and protection principles. Efforts to legal reform and the education of society remain important to change their perceptions of that harmful practice (Mufti, 2016). The lawmaking process is highly recommended to involve experts, activists, and civil society institutions to ensure the regulations' applicability and promote gender equity and social justice.

In addition, poor legal compliance in society remains an issue in Indonesia, as stated by Amran Suadi, a Supreme Court Justice:

*"I rejected the accusations that the religious Court is an institution responsible for the legalization of child marriage solely based on the increasing number of child marriage dispensation applications and the court decisions granting the dispensation. The accusation should be reversed; why did the people apply for marriage dispensation? Judges and officials in the judiciary are passive parties. They only serve the people coming (to the courts). As I said earlier, legal materials or norms on child marriage prevention exist and are already enforced. However, the community determines the effectiveness of those laws and regulations. My instructions are clear: the Supreme Court Regulation on Marriage Dispensation must be used as a legal reference in handling marriage dispensation cases. The Supreme Court has not yet evaluated its applicability, and I think this is the job of the academics"* (Suadi, 2022).

Meanwhile, the desacralization of laws occurs in Malaysia because the laws in Malaysia are very plural. According to Tuan Haji Shaiful Azli bin Jamaluddin, the judge at the Department of Sharia Justice in Malaysia, although laws in Malaysia follow sharia regulation, they are still bound by international laws, such as the Convention on the Rights of the Child. Several states, such as Negeri Sembilan, Sarawak, and Selangor, have revised the minimum age of marriage to 18 years old for males and females. Factors influencing the practice of child marriage include, *first*, the lack of children's interest in continuing their education. *Second*, the unfortunate economic condition of the families makes parents difficult to send their children to school; instead, they marry off their children. *Third*, romantic and intimate relationships lead to premarital pregnancy. *Fourth*, quick-thinking parents marry off their children to avoid the responsibility of providing for them (Jamaluddin, 2022).

Even though the laws are very plural in Malaysia, the Sharia Judiciary Office issued procedures to request courts' permission for early

marriage, applicable in every state and federal territory of Malaysia. These procedures are a solution to the marriage law desacralization caused by legal plurality. Shaiful Azli Bin Jamaluddin confirmed that: *although the efforts to prevent (child) marriage is the authority of the Ministry of Women, Family and Community Development under the Social Welfare Department (JKM), the Sharia Court determines very strict procedures, such as having to obtain recommendations from three agencies of The Ministry of Women, Family and Community Development, Ministry of Health Malaysia (KKM) and the Royal Malaysian Police (PDRM). Because every state in Malaysia complies with a sultanate authority, some judges refuse to revise the minimum age of marriage as they adhere to sharia law* (Jamaluddin, 2022).

Apart from the legal plurality in Malaysia, desacralization is the differences in the legal provisions for Muslims and non-Muslims, as well as for different federations and states (Kohno et al., 2019). This complicates maintaining the consistency and uniformity of law in child marriage prevention (Rahman & Khambali, 2013). In this case, legal enforcers and society face challenges implementing the law.

In responding to the situation, collaboration and dialogue between authorities become critical. They need to focus on mutual agreement and understanding how to implement human rights and child protection principles. This also strengthens a more inclusive, just, and effective legal system. The Malaysian Sharia Court issued a procedure applied to all Malaysian people that those applying for early marriage permission should obtain recommendations from three ministries: the Ministry of Women, Family and Community Development, the Ministry of Health, and the Royal Federation of Malayan Police.

Thus, based on the theory of legal substance, resistance occurs due to the desacralization of the law on the prevention of child marriage in Indonesia and Malaysia. In the Indonesian context, this happens due to a lack of public compliance with laws. As for the Malaysian context, desacralization occurs because of the legal plurality.

### **Sharia and Legal Culture Negotiation**

In Indonesia and Malaysia, rigorous negotiation of sharia and legal culture has created resistance to ending child marriage. There have

been prolonged debates and negotiations between sharia as a religious norm and law as a state legal norm, as well as the negotiation of legal culture in Islamic courts. These two negotiations influence people's awareness and compliance with the existing law (Barkah et al., 2022; Rokhmad & Susilo, 2017; Simatupang, 2021). In Indonesia, for example, the low educational background and religious literacy (which has not yet reached the level of *maqashid sharia*) cause the high rate of early marriage. In addition, some cultures in Indonesia accept early marriage as part of their customs. Likewise, the economic level of Indonesian society influences its people to practice early marriage. In Malaysia, opposition to ending child marriage arises owing to social deviations, religious conservatism, education level, family social rank, low literacy and conservative religious understanding. These shape legal culture's attitudes and values.

The disparity in the marriage age restriction between Islamic jurisprudence (*fiqh*) and Islamic law complicates the debates, leading to opposition to limiting child marriage (Abubakar et al., 2021; Ridho et al., 2022; Nur et al., 2020; Taufiq, 2020). Marriage age restriction is not available in *fiqh*; even al-Yaqut al-Nafis, the Shafi'i school's *fiqh* literature, does not specify age limits for marriage (al-Syathiri, 2011). In the context of Indonesian and Malaysian society, the majority of Shafi'i adherents are also more prevalent in child marriage due to their adherence to *fiqh* rather than state legislation.

The Shafi'i school of thought provides relatively strict limitations in marrying a female at a young age, with considerations of the *maṣlahah* (goodness) and *mafsadah* (harm). This limitation is to marry according to the principle of *kafā'ah* (compatibility), avoiding disputes in the household, appropriate and affordable dowry, and avoiding negativity in family relationships (Rusydi, 2015). Similarly, Imam al Shafi'i considers *maqāṣid al-shari'ah* (sharia objectives) in child marriage. Unfortunately, *fiqh* literacy among the Indonesian and Malaysian communities has not yet reached the level of *maqāṣid al-shari'ah*. They are still contradicting *fiqh* with marriage laws. The difficulty in negotiating *fiqh* and state law has become a factor causing resistance to child marriage prevention.

The difficult negotiations are due to poor education and understanding of *fiqh* (Ridho et al., 2022), leading to conservative religious attitudes. Some believe that child marriage practice does not violate their religious

values. These practices tend to violate the principles of child safety and welfare protection (Fontes & Plummer, 2010). For example, most child marriage cases often involve parents with poor educational levels (Idrees & Taufiq, 2022).

Mashuri, one of the Pamekasan Religious Court judges, confirmed that the main obstacle the Religious Court judges face in adjudicating the application for a marriage dispensation is more on the education of the couples' parents. That is why they only hope their children get married soon to free them from the responsibility of providing for their children and without thinking about their children's future (Mashuri, 2022).

Legal culture negotiations also occur in the Religious Courts in adjudicating child marriage dispensations (Supriyadi & Suriyati, 2022). Judges' interpretations tend to differ. Some judges are progressive, and others are conservative. Judges also consider dialogue and negotiation with culture (community culture) (Wettstein et al., 2019). In this case, culture is very influential in the increase of child marriage numbers in Indonesia. Culture is formed from *'urf* and customs that become habits. This is among the obstacles faced by religious court judges. They force themselves to marry off their children because they are influenced by the culture (Muslimin, 2018).

Marwan Ibrahim Piinga, one of the judges at the Probolinggo Religious Court, stated as follows:

*"The obstacle we face in adjudicating the application for marriage dispensation is more on society's culture. People force themselves to marry off their children even though they have not met the age required for marriage. In this case, we still have to refer to Marriage Law No. 16 of 2019, stipulating the minimum marriage age of 19 unless in an emergency. Then, we grant the dispensation. There is no solution except relying on the law"* (Piinga, 2022).

Another place where local cultures influence the practice of child marriage is Papua. When males and females reach ten years old, they are considered ready to marry. Ade Yamin, a Papuan Muslim leader, stated, "In Papua, Muslims are more obedient to the state law. There are only a few marriage dispensation applications, which are only in the case of emergency. This differs from the local tribes where marriage at young ages becomes a tradition. The age of 10 to 18 is



the period of children's physical, psychological, and intellectual growth and development. High curiosity and desire to try new things are the characteristics of teenagers. Wahana Visi Indonesia (WVI) recorded 24.71% of teens married under 19 in Papua. WVI even noted that there were children who married at ten years old. The data was compiled from the WVI research in four districts/cities, including Jayapura, Jaya Wijaya, Biak Numfor, and Asmat" (Yamin, 2022).

Farhanah, a judge at the Pamekasan Religious Court, maintained that Madura also faced a similar situation. As a judge, she should negotiate with the surrounding legal culture. The flourishing of *nikah sirri* (unregistered marriage conducted in Islamic ways) practice has forced her to grant marriage dispensations by considering a *fiqh* principle of "*idhā ta'arada al-mafsadatāni ru'ya a'zabumā dararan bi irtikāb akhaffhimā*". Even Farhanah has never rejected a marriage dispensation request. She said:

*"I have never refused a marriage dispensation. This is better than nikah sirri. The important matter is that the conditions are completed and reasonable. Fortunately, most (marriage dispensation) applicants I deal with are 16 years old. I once dispensed a 14-year-old girl to get married because she was pregnant. There is also a 15-year-old girl forced to marry because she has a terminally ill mother and her father passed away. So, no one takes care of her unless she gets married. I allowed it because her future husband is 25 years old and has a job"* (Farhanah, 2023).

Jamadi, the Sumenep Religious Court's chief judge, views culture as the main factor influencing the obstacle in ending child marriage in Madura. Madurese culture considers that the appropriate age for marriage is fifteen to seventeen years old. Jamadi as a judge, chose to be passive as he regarded himself as powerless to hinder the cultural belief of the society. He stated that the culture and situation had forced the Religious Court judges in Madura to grant marriage dispensation. However, the people tend to obey the law. When they are rejected to register their marriage at the Religious Affairs Office (Kantor Urusan Agama), they will follow the rule by applying a marriage dispensation to the Religious Court. In Madura, what is interesting is that almost 99% of marriage dispensations are not due to premarital pregnancy like in other regencies. According to Jamadi, the cultural reason makes the age for marriage fifteen to seventeen years old. This is mostly practiced by parents with low education levels. In other cases, many parents had

already sent wedding invitations before going to the Religious Affairs Office. If the marriage did not happen, the parents could commit *carok* (killing) to those who prevented the marriage. The judges concern about safety due to this harsh and violent culture. Furthermore, sociologically, girls who are over 20 are considered old. If they are not married, they will be considered a disgrace to the family (Jamadi, 2022).

Aside from cultural factors, economic factors also influence the resistance to child marriage prevention (Siregar et al., 2022). Edy Muhammad, the head of the Women's Empowerment and Child Protection, Population Control and Family Planning office in the City of Yogyakarta, mentioned that the constraints in preventing child marriage include economic factors. This is because people consider marrying off their children a solution to escape poverty. Several other reasons are related to children's low education and environmental factors. Children dropping out of school become one of the factors leading them to marry at early ages. As for the environmental or residential factors, people in rural areas are more likely to marry at young ages than those in urban areas. This is often due to their narrow understanding of religion and cultures (Muhammad, 2022).

In the meantime, the negotiation in the child marriage practice in Malaysia is influenced by conservatism and adherence to local cultures, especially from the local Malay people (Farid et al., 2022). Their limited religious understanding leads to the negligence of sharia principles. In some cases, conservative attitudes cause the incorrect interpretation of religious teaching and the permissibility of child marriage practices (Keister, 2008). Some may believe that early marriage is part of their culture and tradition. Also, they often relate the permissibility of child marriage with their affection for religion. In this case, they ignore the provision of *maqāṣid al-sharī'ah* in negotiating child marriage practices. Legal culture also becomes a crucial element in child marriage prevention (Amir et al., 2019; Peletz, 2018). The influence of the living law is often stronger than the state's law, even if the living law violates the religious law (Harahap, 2015). Some examples involve premarital pregnancy and intimate relationships between young couples.

Kamarul Zaman bin Ali, a judge for the Malaysian Sharia Judicial Service (JKSM), stated that:

*“Early marriages are brought to the lower Court. Factors leading to early marriages are sexual promiscuity causing premarital pregnancy; and the heart purity tradition among pesantren students. They get married soon after finishing religious learning. There are often two kinds of application, early marriage and request for wali hakim (as the bride was born out of wedlock). If the Malaysian Court declines their requests, the people can go to Thai courts. Child marriage prevention is not only maintained by the Sharia courts. Child marriage is also a part of social problems. Some questions arose: Where is the role of the parents? Where is the role of the teachers? Where is the role of the community in social interactions? Are these roles only visible when extramarital pregnancy occurs and children marry at a young age? The court’s role is heavily questioned in that situation, while others’ roles are ignored.” (Bin Ali, 2022).*

In conclusion, the factors causing early marriages are mostly related to social problems, such as *khalwat* cases, pregnancy out of wedlock, lack of education, arranged married by family, and religious understandings. Before going to the Sharia Court, parents play a significant role in educating their children to develop their morals and social interactions. At this stage, the Sharia Court is not an executive institution nor a policy maker. The Sharia court only decides on existing cases. What is important is how the government develop policies to prevent minors. Therefore, the government must maintain productive discussions with other institutions to prevent child marriage (Bin Ali, 2022).

Despite social deviations, some judges decided to postpone an early marriage application. An example is the case handled by Azzeman bin Omar, a High Judge of the Syariah Court for the Kuala Lumpur and Putra Jaya Areas. Omar said there were several extramarital relations cases for which he was held accountable. The man was 17 years and 11 months. Then judges decided to hold back the marriage for another month so the applicant reached the appropriate age to marry. In the early application, the courts will receive recommendations from three agencies. The judges will consider the applicant’s capability from three aspects: religion, health, and responsibility to provide for the family (Bin Omar, 2022).

Thus, the tough negotiations involving religion and legal culture in child marriage prevention in Indonesia and Malaysia lead to resistance to that prevention efforts. Moreover, the lack of public understanding of *fiqh* and laws tends a result in ignorance of the considerations

of *maṣlahah* and *mafsadah* in *maqāṣid al-sharī'ah*. As a result, child marriage practices remain a difficult issue.

### **Synergy Disfunction Between Government, Civil Society, and Community Leaders**

In early modern Europe, the church's authority began to be eroded with the nation-state's emergence. In the current era, there has been a tendency to show the decline of the state roles. This means the government must involve other forces in addressing various issues. Even the military needs support from the public sector (Schwab, 2008). The involvement of non-state actors, such as civil society and public sectors, in addressing particular issues becomes important as the state burden gets heavy. According to Benjamin Junge, the relationship between the three elements: state, private sectors, and civil society need to be maintained as its absence may lead to passive and individualistic citizenship (Junge, 2012). In the case of child marriage, the state plays a central role as a regulator in formulating policies and regulations to prevent child marriage. The success of the anti-child marriage campaign depends on the state's commitment to implementing the law (MacPherson, 1989).

As Non-Government Organizations consisting of advocacy groups and activists, civil society plays a significant role in enhancing societal awareness. These organizations and individuals maintain campaigns, education, data collection, and policy advocacy to prevent early marriage practices (Brides, 2013). On the other hand, community leaders are the agents of change that can influence people's perspectives and attitudes towards the issue. Community leaders can help to promote the importance of education and gender equity awareness as a means to protect children from harmful marriage practices (Girls, 2018).

Furthermore, ending child marriage is one of the global Sustainable Development Goals. If this goal is to be achieved in 2030, the prevalence of child marriage should increase from 1.9% to 23 %. Nowadays, 30 countries have developed policies and national programs to achieve such a goal. However, they face challenges and difficulties in implementing those policies, especially at sub-national levels. At the national level, the states should identify and involve a leadership with commitment, responsibility and skills to develop mutual understanding in addressing

child marriage issues (Forte et al., 2019). It implies the critical need for synergy between stakeholders, involving the state, civil society, and community leaders.

The dysfunctional synergy between government, society, and community leaders also causes resistance to child marriage prevention. This dysfunction decreases law effectiveness, creating confusion and civil disobedience in society (Iskandar et al., 2021; Muzainah & Mansyuroh, 2022; Nurdin et al., 2021). Although synergies have been developed among government agencies in Malaysia, disharmonies among government agencies still occur in several regions, such as Sarawak, Kelantan and Sabah (Hui, 2018).

The disharmony between the government and community leaders has also occurred in various regions in Indonesia. Zainal Fanani, a judge at the Religious Court, stated that the surge in marriages in Indonesia occurred due to the absence of a support system or disharmony between the government and community leaders. He stressed that the surge in the number of requests for dispensation from marriage to the Religious Courts indicated that the community was not ready to leave the cultural understanding of early-age marriage, even though they are aware that the marriage potentially leads to problems in the future. The support of community leaders is an essential element in which they should be committed to preventing child marriage as part of protecting children's rights (Fanani, 2022).

Muchsin, a judge at the Religious Court of Sampang Regency, said that early marriage is also supported by figures such as religious leaders with the reason to avoid adultery. Many teenagers and their families chose *nikah sirri* after the unwanted pregnancy. After that, they just came to Religious Affairs Office to register their marriage. Muchsin says this is still much better than several other places where a most dispensation is given because they are pregnant out of wedlock (Muchsin, 2022).

The synergy dysfunctions between government agencies are visible in the Sampang area, Madura. Ruqayyah said that the community and religious leaders in Sampang supported *nikah sirri*. This is why the court grants the marriage dispensations, as 90% of the applicants have already had their marriage in front of the local religious figures

or called *kyai*. Due to the support from the *kyai* (ulama), the practice of child marriage has become prominent. This eventually leads to a divorce caused by trivial conflicts (Ruqoyyah, 2022).

Moreover, a family has a significant role in preventing child marriage. According to Nurul Qolbi, a Sumenep Religious Court judge, the solution to child marriage should start from the parents/home. Parents must be present in their children's growth and development so they do not fall into actions leading to early marriage. Apart from that, community leaders and religious leaders must also work hand in hand to support efforts to prevent child marriage because the disadvantages are very large (Qolbi, 2022).

Titik Handirayani, a court clerk at the Yogyakarta Religious Court, also conveyed the importance of synergy between institutions. She stated that synergy solves Indonesia's soaring child marriage culture.

*"The main obstacle is that early marriage is part of the culture of society. Therefore, to prevent it, there is a need for a synergy of various elements in society, including government institutions and families. Yogyakarta has a Mayor Regulation on the Prevention of Child Marriage. In this case, the local government synergizes with families, community, business people and media. They intend to create a child-friendly city of Yogyakarta and guide its citizens to grow into healthy and resilient families. Furthermore, the local government has extended the mechanism for applying a marriage dispensation, so many parents of the bride and groom complained about the process"* (Handirayani, 2022).

With such a complex mechanism, it is expected that the number of marriage dispensation applications can be reduced. In 2021, the Sampang Religious Court received an award as the Court that gave the least dispensation from marriage. This is considered an extraordinary achievement, even though many people in Sampang still practice *nikah sirri*. According to Jamadi, the award is because Sampang Religious Court had the lowest percentage of marriage dispensation cases from 2018 to 2020 compared to other courts in Indonesia. However, there is also an assumption that the percentage is caused by more people having chosen to conduct *nikah sirri*. This assumption is not based on qualitative or quantitative data. In contrast, the governor's award is based on statistical data. Therefore, Jamadi sees that there is a need for further studies (Jamadi, 2022).

Muflihah, an academic and gender activist, sees that the synergy disfunction between the local government and community leaders happens mostly in the case of premarital pregnancies. Parents whose children are pregnant out of wedlock come to the local figures to conduct *nikah sirri*. This synergy dysfunction, in turn, causes the desacralization of marriage and resistance against child marriage prevention. According to Muflihah, one way to obtain court permission to marry at a young age is by performing *nikah sirri*, which is mostly caused by extramarital pregnancy. There are similarities and differences in applying regulations regarding the legal age of marriage. The similarities mostly cover technical and administrative issues, and the basic foundation of the age marriage references are the Quran and hadith. The differences are regarding socio-historical records of early-age marriage and local traditions and cultures (Muflihah, 2022).

Meanwhile, even though the synergy between government institutions exists in Malaysia, there has been a synergy dysfunction between the government and community leaders in several states. Malaysia adheres to the monarchical system and has Jabatan Kehakiman Syariah Malaysia (JKSM) or the Malaysian Sharia Judiciary Office in its judicial system—the state-issued guidelines for Sharia Courts in deciding child marriage applications. Thus, the Courts do not face any polemics in granting the permissions. As mentioned above, marriage permission can be granted only with three institutions' reports. The judges should decline the application without those reports. Those reports consist of surveys and observation results made by experts. The system makes it easier for the judges to decide on the application. Apart from receiving reports from the three agencies, the judge also considers the risk of early child marriage. They tend to cancel if they do not find any good in the marriage (Bin Omar, 2022).

The working standard issued by JKSM has been integrated with several related agencies such as the Royal Malaysian Police (PDRM), the Ministry of Health, and the Ministry of Women, Family and Community Development (Position of Community Virtue). Tuan Hakim Kamarul Zaman bin Ali stated that JKSM provides standard operating procedures (SOP) for judges to grant a dispensation for early marriages. It contains rigorous requirements and reports on early marriages as an effort to prevent early marriages. These requirements

include information from the Ministry of Health, Community Virtue Officers, and criminal reports from the Royal Malaysian Police (PDRM). The strict requirement is essential to be held to minimize child marriage. In other words, a rigid system is the other way to prevent early marriages (Bin Ali, 2022).

The synergy between the religious Court and government institutions makes child prevention efforts effective. Mohammad Sukri Bin Ab Wahab, a judge of the lower Court of the federal region, stated that the standard acceptance of early marriage assignment includes strict regulation and reports or surveys from related organizations. For example, the survey usually relates to domestic activities where the bride can cook and have a good attitude with the parents and in-laws. Further, they observe the groom's readiness to provide for living expenses and be responsible for his marriage. So far, the community has obeyed and followed the standardized system before practising early marriage. The Malaysian Syariah Judiciary Office has issued guidelines for judges throughout the state. This is effective and beneficial for the federal government, including Kuala Lumpur, Putra Jaya and Labuan, to work based on the standard operating procedures or guidelines. Meanwhile, other states still face challenges implementing this system since they have different chief judges under Sultan's authority (Bin Abd Wahab, 2022).

Based on the legal system theory, resistance has occurred in Indonesia because the legal structure has not been adequately integrated. In the legal format, institutions are created by a legal system to enforce child marriage prevention. Resistance occurred because of the synergy disfunction between government institutions, so law enforcement was ineffective. The cooperation between a government with other agencies is missing. Meanwhile, Malaysia has undergone synergy among organizations, so the law effectively prevents child marriage in Malaysia (Ayako Kohno et al., 2019; Bahari et al., 2021; Awal & Samuri, 2018).

## **Conclusion**

Three societal facts appear to impact opposition to child marriage prevention in Indonesia and Malaysia: desacralization of law; failure of negotiation between sharia and legal culture; and the synergy disfunction between the government, society and religious leaders. These



three societal truths are significant barrier to ending child marriage in Indonesia and Malaysia. Those factors influence the resistance to child marriage prevention efforts.

This study offers a novel viewpoint on the opposition to child marriage prevention using a cause analysis technique. In general, the legal desacralization in Indonesia is due to two factors. First, the law is considered to neglect living law. Second, the lack of society's obedience to the law. On the other hand, legal desacralization happens in Malaysia due to the legal plurality in marriage age. There are differences between marriage age for Muslims and non-Muslims.

The tough negotiations between sharia authorities and legal culture lead to resistance to child marriage prevention in Indonesia and Malaysia. In addition to the limited understanding of *fiqh* and *maqāṣid al-sharī'ah*, the negotiation between state law and legal culture in courts influences the people's legal awareness.

Furthermore, synergy disfunction between the governments, society and religious figures influences legal effectiveness. The limited synergy causes confusion among people. Both countries are connected with Malay culture and almost similar customs of *'urf*. However, they have different legal approaches to ending child marriage. Indonesia still faces challenges in maintaining synergy between parties, while in Malaysia, even though the synergy between the government institutions is well maintained, Malaysia still faces challenges in the synergy between the government institutions with the community and its leaders.

## References

- Abubakar, A., Juliana, & Hasan, M. R. (2021). The right of a child outside the legal marriage of a biological father: The analysis of Hifz Al-Nafs as Law Illat. *Samarah*. <https://doi.org/10.22373/sjhk.v5i1.9256>
- Al-Syathiri, A. ibn U. (2011). *Al-Yāqūt al-Nafīs fī Madhhab Ibn Idrīs*. Dār al-Minhaj.
- Amir, W., Wan, A., 1+, H., Hakimah, A., Halim, A., & Ismail, R. (2019). Equity Crowdfunding in Malaysia: Legal and Sharia Challenges. *International Journal of Asian Social Science*, 9(8), 450–460. <https://doi.org/10.18488/JOURNAL.1.2019.98.450.460>
- Anam, M. K., & Nelli, J. (2021). Perceraian di Depan Pengadilan Agama Menurut Hukum Islam dan Hukum Positif di Indonesia Studi Analisis Multi Disipliner. *JIL : Journal of Indonesian Law*. <https://doi.org/10.18326/jil.v2i1.1-24>

- Anda, C. E. G. (2018). Good Living as a Living Law. In *Australian Journal of Indigenous Education*. <https://doi.org/10.1017/jie.2017.30>
- Arrisman, A. (2018). Islamic Law and Business Ethic Perspectives towards Burning Forest as Method to Land Clearing. *AHKAM : Jurnal Ilmu Syariah*. <https://doi.org/10.15408/ajis.v18i1.7489>
- Ayako Kohno et al. (2019). “[In]-depth examination of issues surrounding the reasons for child marriage in {Kelantan},. *Malaysia: A Qualitative Study*,” *BMJ Open* 9.
- Bahari, N., Ahmad, Y., & Azira Ayob, N. (2021). Child Marriage in Malaysia: Whose Rights are being Violated? *UiTM Cawangan N. Sembilan, Kampus Seremban, 1*(October), 978–967.
- Barkah, Q., Huzaimah, A., Rachmiyatun, S., Andriyani, & Ramdani, Z. (2022). Abandonment of Women’s Rights in Child Marriage; An Islamic Law Perspective. *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial*. <https://doi.org/10.19105/al-Ihkam.v17i2.6725>
- Basri, H., Miswar, A., Hasan, H., Pabbajah, M., & Khalik, S. (2022). Inheritance Rights of Women in Makassar Society: A Study of Living Qur’an and its Implications for Islamic Law. *Samarah*. <https://doi.org/10.22373/sjhk.v6i2.13882>
- Bin Abd Wahab, Mohamad Sukri. (2022). *personal communication*, judge of Sharia Court of Malaysia, 2 August.
- Bin Ali, Kamarul Zaman (2022). *personal communication*, Sharia Court of Malaysia, 2 August.
- Bin Jamaluddin L, Shaiful Azli. (2022). *personal communication*, Sharia Court of Malaysia, 3 August.
- Bin Omar, Haji Azzeman. (2022). *personal communication*, High Court of Mahkamah Syariah of Kuala Lumpur and Putra Jaya Federation, 3 August.
- Brides, G. N. (2013). *Girls Not Brides: The Global Partnership to End Child Marriage*.
- Darmawan, Husna, A., Rahmatillah, M., & Imran, H. (2022). Marriage Dispensation and Family Resilience: A Case Study of the Bener Meriah Shariah Court, Aceh Province. *Abkam: Jurnal Ilmu Syariah*. <https://doi.org/10.15408/ajis.v22i2.28827>
- Fanani, Zainal. (2022). *personal communication*, Religious Court, 12 August.
- Jamadi. (2022). *personal communication*, the Sumenep Religious Court’s chief judge, 19 September.
- Farhanah. (2023). *personal communication*, judge at the Pamekasan Religious Court, 4 June
- Farid, A., Chung, I., Agha, S. S., & Yu, R.-C. (2022). *Negotiating Ideations: The Role of State-Led Identity-Making in the Progress of Women’s Rights in Malaysia*.
- Fauzan. (2022). *personal communication*, judge at the Palangkaraya Religious Court, 14 September

- Fontes, L. A., & Plummer, C. (2010). Cultural issues in disclosures of child sexual abuse. *Journal of Child Sexual Abuse, 19*(5), 491–518.
- Forte, C. Lo, Plesons, M., Branson, M., & Chandra-Mouli, V. (2019). What can the global movement to end child marriage learn from the implementation of other multi-sectoral initiatives? *BMJ Global Health, 4*(5), e001739.
- Girls, N. B. (2018). *About child marriage*.
- Grijns, M., & Horii, H. (2018). Child marriage in a village in West Java (Indonesia): Compromises between legal obligations and religious concerns. *Asian Journal of Law and Society, 5*(2), 453–466.
- Handayani, Y. (2020). Tipologi Pelaksanaan Kewajiban Nafkah Lahir Suami Yang Berstatus Narapidana Perspektif Hukum Islam (Studi Analisis Interpretasi Teori Qira'ah Mubadalah). *JURIS (Jurnal Ilmiah Syariah), 19*(1), 13–30.
- Handariyani, Titik. (2022). *personal communication*, Junior Clerk of Religious Court of Yogyakarta City, 5 August.
- Harahap, S. M. (2015). Islam dan Budaya Lokal: Studi terhadap Pemahaman, Keyakinan, dan Praktik Keberagamaan Masyarakat Batak Angkola di Padangsidempuan Perspektif Antropologi. *TOLERANSI: Media Ilmiah Komunikasi Umat Beragama, 7*(2), 154–176.
- Harisudin, M. N. (2021). The formulation of Nusantara fiqh in Indonesia. *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan, 21*(1), 39–58. <https://doi.org/10.18326/ijtihad.v21i1.39-57>
- Harvey, C. M., FitzGerald, I., Sauvarin, J., Binder, G., & Humphries-Waa, K. (2022). Premarital conception is a driver of child marriage and early union in selected Southeast Asia and the Pacific countries—*Journal of Adolescent Health, 70*(3), S43–S46.
- Hassim, M. H., Abral, M., & Salam, N. Z. (2020). Spektrum Perkahwinan Kanak-Kanak di Malaysia: Kajian Perbandingan Antara Enakmen Undang-Undang Keluarga Islam Negeri, Akta Memperbaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 dan Konvensyen Antarabangsa. *E-Jurnal Penyelidikan Dan Inovasi, 7*(August), 20–44.
- Hui, K. C. (2018). Jabatan Kehakiman Syariah Malaysia. *Annual Report*.
- Irani, M., & Roudsari, R. L. (2019). Reproductive and Sexual Health Consequences of Child Marriage: A Review of Literature. *Journal of Midwifery & Reproductive Health, 7*(1).
- Iskandar, A., Possumah, B. T., Aqbar, K., & Yunta, A. H. D. (2021). Islamic Philanthropy and Poverty Reduction in Indonesia: The Role of Integrated Islamic Social and Commercial Finance Institutions. *Al-Ibkan: Jurnal Hukum Dan Pranata Sosial*. <https://doi.org/10.19105/AL-LHKAM.V16I2.5026>
- Ismail, W. A. W. (2018). Jabatan Kehakiman Syariah Malaysia (JKSM) Mesyuarat Parlimen ke-14, Penggal Pertama, Mesyuarat Kedua. *Annual Report*.
- Junge, B. (2012). NGOs as shadow pseudo publics: grassroots community leaders' perceptions of change and continuity in Porto Alegre, Brazil. *American Ethnologist, 39*(2), 407–424.

- Keister, L. A. (2008). Conservative Protestants and wealth: How religion perpetuates asset poverty. *American Journal of Sociology*, 113(5), 1237–1271.
- Kohno, A., Dahlui, M., Nik Farid, N. D., Ali, S. H., & Nakayama, T. (2019). In-depth examination of issues surrounding the reasons for child marriage in Kelantan, Malaysia: A qualitative study. *BMJ Open*, 9(9). <https://doi.org/10.1136/bmjopen-2018-027377>
- MacPherson, S. (1989). The Convention on the Rights of the Child. *Social Policy & Administration*, 23(1), 99–101. <https://doi.org/10.1111/j.1467-9515.1989.tb00500.x>
- Mashuri. (2022). *personal communication*, judge at the Pamekasan Religious Court, 23 September.
- Michelle, E., Betarli Lengkong, K., & Jusuf, M. (2020). Ketaatan dan Kepatuhan Hukum Masyarakat terhadap Peraturan PSBB Masa Transisi Berdasarkan Pergub No. 88 Tahun 2020 di Wilayah Jakarta Barat. *ADIL: Jurnal Hukum*. <https://doi.org/10.33476/ajl.v11i2.1654>
- Mohammad Idrees, M. U. H., & Taufiq, M. (2022). Daur at-Tarbiyyah al-Islamiyyah fi Nasyr ats-Tsaqafah al-Qanuniyyah fi al-Mujtama' al-Muslim. *El Harakah: Jurnal Budaya Islam*, 24(2), 355–372. <https://doi.org/10.18860/eh.v24i2.17637>
- Mohd, A., & Kadir, N. A. (2019). Minimum age of marriage under Islamic law and the Islamic family law (Federal territories) act 1984: A preliminary study on the ideal age of marriage in Malaysia. *Al-Shajarah*.
- Muchsin. (2022). *personal communication*, judge at the Sampang Religious Court, 19 September.
- Muflihah. (2022). *personal communication*, Head of Center for Gender and Child Studies, 9 September.
- Mufti, A. M. (2016). Pembaharuan Hukum dalam Kompilasi Hukum Islam di Indonesia. *Jurnal Ilmiah Al-Syir'ah*, 7(1).
- Muhammad, Edy. (2022). *personal communication*, Head of the Office of Women's Empowerment, Child Protection, Population Control and Family Planning, Yogyakarta City, 9 September.
- Muslimin, J. (2018). *Law and Culture: 'Urf as a Substance of Islam Nusantara as Reflected in Indonesian Religious Court Decisions*. <https://doi.org/10.2991/icclas-17.2018.37>
- Muzainah, G., & Mansyuroh, F. A. (2022). The Integration of Islamic Law and Banjarese Customary Law in the Distribution of Inheritance to the Chinese Muslim Community in Banjarmasin, South Kalimantan. *Samarah*. <https://doi.org/10.22373/sjhc.v6i2.12386>
- Natsif, F. A. (2018). Problematika Perkawinan Anak (Perspektif Hukum Islam dan Hukum Positif). *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam*, 5(2), 175–186.
- Naveed, S., & Butt, D. K. M. (2020). Causes and consequences of child marriages in South Asia: Pakistan's perspective. *South Asian Studies*, 30(2).

- Nik Wajis, N. R., Mochammad Sahid, M., Mohamad Yunus, M. I., & Baharli, N. S. (2020). Perkahwinan Kanak-Kanak Di Malaysia: Had Umur Minimum Dan Implikasinya. *Malaysian Journal of Syariah and Law*, 8(2), 15–30. <https://doi.org/10.33102/mjssl.vol8no2.252>
- Noor Aziah Mohd Awal, & Mohd Al Adib Samuri. (2018). Child marriage in Malaysia. *UNICEF Malaysia*, 93.
- Nour, N. M. (2009). Child marriage: a silent health and human rights issue. *Reviews in Obstetrics and Gynecology*, 2(1), 51.
- Nur, I., Adam, S., & Muttaqien, M. N. (2020). Maqāṣid Al-Sharī'at: The Main Reference and Ethical-Spiritual Foundation for the Dynamization Process of Islamic Law. *Ahkam: Jurnal Ilmu Syariah*, 20(2), 331–360. <https://doi.org/10.15408/AJIS.V20I2.18333>
- Nurdin, R., Yusuf, M., & Natasya, S. S. (2021). The gayonese culture of marriage system: The Islamic law perspective. *Samarah*. <https://doi.org/10.22373/sjhk.v5i1.9257>
- Peletz, M. G. (2018). Are Women Getting (More) Justice? Malaysia's Sharia Courts in Ethnographic and Historical Perspective. *Law & Society Review*, 52(3), 652–684. <https://doi.org/10.1111/LASR.12346>
- Piinga, Marwan Ibrahim. (2022). *personal communication*, judge at the Probolinggo Religious Court, 18 August.
- Qolbi, Nurul. (2022). *personal communication*, judge at the Sumenep Religious Court, 15 September.
- Rahman, N. F. A., & Khambali, K. M. (2013). Religious tolerance in Malaysia: Problems and challenges. *International Journal of Islamic Thought*, 3, 81.
- Ridho, M., Nur, I., Maftukhin, M., & Akhyak, A. (2022). Fiqh of reciprocity (Exploring the Concept of Construction and Deconstruction of the Rights of Guardianship of Children; Perspectives of the Indonesian Islamic Marriage Registrar Association and the Indonesian Family Law Lecturers Association). *Technium Social Sciences Journal*. <https://doi.org/10.47577/tssj.v28i1.5878>
- Rokhmad, A., & Susilo, S. (2017). Conceptualizing authority of the legalization of Indonesian women's rights in Islamic family law. *Journal of Indonesian Islam*. <https://doi.org/10.15642/JIIS.2017.11.2.489-508>
- Ruqoyyah. (2022). *personal communication*, religious leader, 19 September.
- Rusydi, M. (2015). *Nikāh al- Ṣighār wa Ḥukmuhū fī al-Islām 'inda Madhhab al-Shāfi'ī*. Universitas Muhammadiyah Makassar.
- Schwab, K. (2008). Global corporate citizenship: Working with governments and civil society. *Foreign Affairs*, 107–118.
- Simatupang, T. H. (2021). Adult Age in Marriage in Indonesia (Theoretical Study of the Application of the Lex Posterior Derogat Legi Priori Principle). *Jurnal Penelitian Hukum De Jure*. <https://doi.org/10.30641/dejure.2021.v21.213-222>
- Siregar, F. A., Tarigan, A. A., Nofialdi, N., Yulika, F., Syahputra, I., Nurhayati, N., & Ridwan, B. (2022). Staying at Home: The Perspectives of Minangkabau

- Ulemas Concerning Husbands' Provision of Sustenance in Covid-19 Impacted Households. *JURIS (Jurnal Ilmiah Syariah)*, 21(2), 133–142.
- Suadi, Amran. (2022). *personal communication*, Supreme Court Justice, 23 September.
- Supriyadi, & Suriyati, S. (2022). Judges' Legal Culture in Dealing with High Number of Applications for Child Marriage Dispensation during Covid-19 Pandemic at the Kudus Religious Court. *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial*. <https://doi.org/10.19105/AL-LHKAM.V17I1.6060>
- Svanemyr, J., Chandra-Mouli, V., Christiansen, C. S., & Mbizvo, M. (2012). Preventing child marriages: first international day of the girl child “my life, my right, end child marriage.” *Reproductive Health*, 9, 1–3.
- Taufiq, M. (2020). A Critique against the Perspective of Al-Thufy on the Contradiction of Maslahat and the Holy Text. *Millati: Journal of Islamic Studies and Humanities*, 5(2), 121–128. <https://doi.org/10.18326/mlt.v5i2.121-128>
- Tauratiya, T. (2018). Faktor Penyebab Timbulnya Kepatuhan Masyarakat terhadap Hukum (Legal Obedience). *ASYSYAR'YYAH: JURNAL ILMU SYARIAH DAN PERBANKAN ISLAM*. <https://doi.org/10.32923/asy.v3i2.1169>
- UNICEF. (2021). *Global Annual Results Report 2021: Every Child is Protected from Violence and Exploitation*.
- Wettstein, F., Baur, D., Sanjay, P., Jones, C., Kinder, T., Mullery, C. B., Brenner, S. N., Perrin, N. A., Aldaba, R. M., Kituyi-Kwake, A., Adigun, M. O., Braden, E., Norman, A., Clougherty, J. A., Rival, M., Brinkerhoff, D. W., Ng, S., Sacks, G., Kelly, B., ... Berberoglu, Sü. (2019). Examining the Performance of Competition Policy Enforcement Agencies: A Cross-Country Comparison. *Business and Society*.
- Wicaksono, A. (2021). Implications of Unregistered Marriage for Women: Profitable or Detrimental. *NORMA*. <https://doi.org/10.30742/nlj.v18i1.1198>
- Yamin, Ade. (2022). *personal communication*, a Papuan Muslim figure, 4 August.
- Yasin, D. T. (2016). Objektifikasi Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan (Sebuah Gagasan Pemikiran). *Al-Mizan (e-Journal)*, 12(1), 117–149.

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