Early and Forced Marriages in Republic of Indonesia

A brief submitted to the Office of the High Commissioner for Women’s Rights and Gender Section (WRGS) at the 26th session of the Human Rights Council

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**Introduction**

The following submission is presented by APIK to the Office of the High Commissioner for Human Rights on the occasion of the 26th session and provides a brief summary of the violations of the rights of girl children in the Republic of Indonesia as a result of laws and culture including the interpretation of religion that permit and indeed condone the practice of early marriage.

APIK is an association of 16 legal aid offices for women that provide legal assistance for poor women who experience discrimination and violence against women. Besides, APIK is doing legislative advocacy to change laws that discriminate against women and it drafts new laws that are friendly toward women.

In this submission “early marriage” refers to a marriage that takes place under the age of 18 – the upper age limit for protection under the 1989 Convention on the Rights of Child (CRC) that has been ratified by the Government of Indonesia (GoI) in 1990 and has been transformed into the Child Protection Act number 23/2002.

The Government of Indonesia also has signed a number of international commitments (binding or not binding) including CEDAW, the Beijing Declaration, the ICPD and the MDGs. While not all are directly linked to age of marriage, the CRC and CEDAW directly address the issue. Moreover, the Government of Indonesia is also a signatory state to the International Convention on Economic and Cultural rights (ICESCR) and the International Convention on Civil and Political Rights (ICCPR). A national machinery has been established to implement CEDAW and other related provisions to protect children in the International Convention, which includes the Ministry of Women’s Empowerment and Child Protection and the Child Protection Commission. So far however no concerted efforts have been made to eliminate early and forced marriage, nor to ratify the Convention on Consent to Marriage, the Minimum Age for Marriage and the Registration of Marriage.

APIK uses the term “early marriage” instead of “child marriage” in response to coordinated efforts of certain states to narrow down the definition of child marriage to include only marriage that involves girl children who have not yet reached the age of menstruation. APIK considers early marriage to be a form of forced marriage because individuals below the age 18 are unable to give informed consent. As with all other forms of forced marriage, early marriage involves elements that are akin to a situation of trafficking and sexual slavery and thereby calls for the kind of interventions that are required to prevent, monitor and prosecute practices like slavery.

This submission details the reality of early marriage in Indonesia and reviews a range of laws, policies and practices that contribute to its persistence and prevalence.

**Early and forced married: a short overview**

Indonesia is the largest Muslim country in the world with a population of 240 million people. It consists of 300 ethnic groups with their own culture and traditions. Some of them practice early and forced marriage. For example in Nusa Tenggara Barat especially in the Sasak tribe and in Bali there is a tradition called Merarik (Nusa Tenggara Barat) or Merari or Malagandang (Bali). Merarik or kidnapping the bride or elopement has been arranged in the prescriptive law of Sasak. It happens if the parents of the bride do not agree to the marriage or when the bride price or the dowry is too high. It is also common that the parents of both the bride and the groom already know the relation of their daughter and son and view Merarik as just a pre-wedding process. However, Merarik is increasingly used to kidnap girls for sexual slavery and trafficking. APIK’s office in Mataram, Nusa Tenggara Barat has been handling many cases of this practice. From 2010 to 2011 the number of cases in which girls are trafficked under the guise of Merarik increased from 6 to 10. To prevent this kind of violence against women and girl children, APIK Mataram carried out a media campaign and conducted paralegal training for religious and village leaders to establish an infrastructure of community- based legal aid at village level. In 2012 the number of cases declined to 6 cases.

In certain areas in which Islamic culture and religion are very strong, like in Nusa Tenggara Barat and West Java (especially in Indramayu and Karawang where most people live in poverty), the average age of marriage for girls is 12 years old. One of the causes is the interpretation of certain Hadith (based on the practices of Prophet Muhammad). Muslim people/men have their own interpretation of the age of marriage, which they practice. Usually they rely on the tradition, which mentions that prophet Muhammad married Aisha when she was only 7 years old. In 2008 Syekh Puji (born in 1965), a cleric and head of an Islamic boarding school from Central Java and a business man) married one of his pupils who was 12 years at the time and he planned to marry 2 more pupils who were only 7 and 9 years old. The reason why he married this young girl and planned to marry 2 more (so he could have 4 wives as allowed by the 1974 Marriage Act) was to prepare them to become managers of his business. The parents said that they allowed their daughter to marry this old man because they thought that they don’t need to pay school fees any more and would be freed from their obligations to take care of their daughters and their other children. 27 NGOs including LBH APIK Semarang reported this case to the police and luckily he was sentenced by the court to 4 years in jail and he had to pay a fine of 60 million. The Court declared that he had violated 2002 Child Protection Act. Both the prosecutor and the accused appealed this verdict at the High Court.

The situation is becoming worse since Islamic hardliners becoming stronger. They have managed to influence the legislation process at the district and provincial level to include elements of sharia law in the regional bylaws. The practice of unregistered marriages or kawin dibawah tangan has also increased.

There are no official statistics on early and forced marriages. Data from the Basic Health Survey in 2010 show that 0,2% of Indonesian girls are married before they have reached the age of 14, while 11,7 marry between the ages of 15 -19. Within ASEAN Indonesia is ranked after Cambodia, as the country with the second highest rate of early marriages. While the study of Plan Indonesia (2011) shows that in Indramayu (West Java); Grobogan (Central Java); Tabanan (Bali); Dompu (Nusa Tenggara Barat), and in Sikka and Lembata (Nusa Tenggara Timur), recorded 33.5 percent of 13-18 year olds ever married, and the average marry at the age of 15-16 years. This early and forced marriage have contributed to the number of divorce.

Fundamental challenges that reinforce the high rate of early marriage include patriarchal institutions, poverty, limited access to education and inadequate and conflicting laws relating to age as a legal person and age of marriage. As a legal person who has the right to vote, get ID card and possess a driving license is 17; this includes access to adult entertainment. The age of freedom to marry however is 21. While according to the1974 Indonesian Marriage Act and the 1991 Compilation of Islamic Law, the legal age of marriage is set at 16 for girls and 19 for boys (article 7 of 1974 Marriage Act). However the same Act allows girls and boys below 16 and 19 to be wedded if the parents have received permission from the court or marriage officer (article 7.2). Data from the Supreme Court shows that in 2012 there were 9,632 cases of parent’s request permission to allow them to wed their children, or 2.38 percent of the total cases handled throughout the Islamic courts as much as 404. 857 cases. If we look at the data from Riau or Jogjakarta, the number isincreasing from time to time. Early and forced marriages also occur in the case of unwanted pregnancy among youth since the goverment reluctant to provide them sex education because of the pressures from Indonesia Ulama Council who think that sex education as about how to teach youth how to have sex that will lead to free sex.

This measures legalizes child, early and forced marriages especially for girls and is absolutely against the CRC and the 2002 Child Protection Act. Even though according to article 71 of the Marriage Act this kind of marriages can be annulled by the government official this is never done. In line with the global trend of a rising mean age of marriage in Indonesia too the mean age of marriage for women aged 15 -50 rose from 17 – 23.4 between 1970 and 2000). However this trend was reversed in 2010 when a figure of 22.3 was found (processed from various data).

The then Minister of Women’s Empowerment asked law makers 20 years ago to draft a law that would increase the legal age of marriage for girls to 22 years and for boys to 24 years old. It conducted an intensive campaign on the issue. However APIK and the National Commission on Violence Against Women proposed to increase the legal age of marriage to a minimum of 19 years old for both sexes. The reason is because that at that age boys and girls can be expected to have a minimum education, to have matured mentally and physically and to be ready to engage in employment. But so far there is no serious effort from the government and law makers to turn this proposal into a law. APIK is now preparing a Bill on the Amendment of the 1974 Marriage Act – not just limited to age of marriage—but also to amend and removing all provisions that are discriminative against women in the 1974 Marriage Act.

Actually, the Indonesian Criminal Code criminalizes husbands who have sex with their underage wives (article 288) and cause injuries or death. This article was introduced by the Dutch colonial government to prevent early and forced marriage that had been practiced for years by the Indonesian people. However this article is hardly known and rarely implemented by the police/prosecutors.

It is clear that the 1974 Indonesian Marriage Act and related rules and measures point to a significant discrepancy between its national codes and its international obligations. Arguments based on tradition, customary law and sharia law can not be allowed to negate the international obligations set out in the international conventions and justify the practice of early and forced marriage and its consequent harmful effects upon children which include but are not limited to educational deprivation, economic disparity, marital rape, mental and physical abuse and violence including trafficking and sexual slavery.

**Conclusion and Recommendation**

As already mentioned, the Government of Indonesia is taking no steps to end the practice of early and forced marriage while the number of early and forced marriages has always been high and is on the rise.

Based on the above facts and findings, APIK offers the following recommendations:

The Office of High Commissioner must encourage the Government of Indonesia:

1. To revise national laws in accordance with its international commitments regarding the age of maturity in order to prohibit early and forced marriage of children below 19 under all conditions
2. To introduce and enforce national laws prohibiting all forms of forced marriage including early and child marriage.
3. To develop and implement effective and comprehensive public education including sexuality education programs especially for youth who are already sexually active, aimed at raising awareness among families and communities about the harmful effects of early and forced marriages on the girl child including on her mental and physical health.
4. To ensure that judicial authorities hold accountable the judges who are directly responsible for approval of early and forced marriage cases. Other private actors including both the biological and adopted parents as well as guardians must be held accountable as well.
5. To provide reparation for victims of early and forced marriages and children who escape from early and forced marriages and provide them with safe shelters, literacy and continuing education as well as capacity building programs facilitating their healthy return to society.
6. To support the effort of NGOs who are preparing the Bill on Amendment of the 1974 Marriage Act and 1991 Compilation of Islamic Laws and adopt those Bills as government initiatives and to take it further along the legislative process.