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## Implications of The Revision of Law No. 16 of 2019 Againts the Practice of Child Marriage

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### ABSTRACT

After the revision of Law No. 16 of 2019 concerning Marriage has implications for increasing child marriage by setting the age of 19 for women. The purpose of this study is to evaluate the existence of Law No. 16 of 2019 regarding the standardization of the age for child marriage. This type of literature exploration research with data collection is based on Statistics Indonesia census data from 2017-2020. The results of this study show that the practice of child marriage after the Marriage Law 2017 age <16 reached 16% and in 2018 dropped to 10%. However, in 2019 the age <16 increased by 14% and the age 17-18 was 23%, while in 2020 the age <16 increased to 15% and the age 17-18 decreased to 19%. The marriage presentation shows that due to the facto revision of the Marriage Law it cannot minimize the practice of child marriage so it requires evaluation and consideration of the content of Law No. 16 of 2019 concerning Marriage.

### A. Introduction

The impact revision of the Marriage Law will encourage the practice of marriage after the age limit of 19 years is set in Law No. 16 of 2019. Reports from Colleen Murray Gastón, Christina Misunas & Claudia Cappa recorded marriage before the age of 18 in several countries, such as West and Central Africa (40.7%),

East and South Africa (34.6%), South Asia (29.8%),<sup>1</sup> America (90%) and the Middle East and Africa (53%),<sup>2</sup> the practice of child marriage is dominated by women compared to men. Whereas in Indonesia, based on Statistics Indonesia data for 2018, child marriage only reached 20-30% per year, while in 2019-2021 there was a significant increase of around 40-50% per year the practice of child marriage. This revision of the Marriage Law appeared egocentric for the applicant and was granted by the Constitutional Court and the DPR, but looking at the reality that is happening in the community, it shows that this change is not based on facts regarding the practice of underage child marriage. Therefore, the purpose of this article is specifically to evaluate the anomaly of changes regarding the standardization of the child marriage age stipulated in Law No. 16 of 2019 concerning marriage.

So far, studies on Law No. 16 of 2019 regarding the practice of underage child marriage include the economy, religion, and community culture (parents). First, Hoko Horii shows that child marriage under the average age is influenced by family economic limitations.<sup>3</sup> Second, the report by Regina Gemignani & Quentin Wodon states that the practice of child marriage is motivated by religion which requires that children who are under their age have the right to marry.<sup>4</sup> However, this opinion was refuted by Hoko Horii, who emphasized that child marriage had nothing to do with religious teachings.<sup>5</sup> However, there are exceptions to child marriage expressed by Colleen, et. all in some countries child marriage has increased due to the security factor and the emergency security of the future of women so that parents are forced to marry off their children as an emergency consideration of harassment and rape.<sup>6</sup> On the other hand, it is difficult to minimize the practice of child marriage due to the collective involvement of all components, both structurally and non-structurally. Jennifer McCleary-Sills, et. all emphasized that minimizing child marriage as a

<sup>1</sup>Megan Arthur et al., "Child Marriage Laws around the World: Minimum Marriage Age, Legal Exceptions, and Gender Disparities" *Journal of Women, Politics and Policy*. 39.1 (2018): 51–74.

<sup>2</sup>Colleen Murray Gastón, Christina Misunas, and Claudia Cappa, "Child marriage among boys: a global overview of available data" *Vulnerable Children and Youth Studies*. 14.3 (2019): 219–228.

<sup>3</sup>Hoko Horii, "A blind spot in international human rights framework: a space between tradition and modernity within the child marriage discourse" *International Journal of Human Rights*. 24.8 (2020): 1057–1079.

<sup>4</sup>Regina Gemignani and Quentin Wodon, "Child Marriage and Faith Affiliation in Sub-Saharan Africa: Stylized Facts and Heterogeneity" *Review of Faith and International Affairs*. 13.3 (2015): 41–47.

<sup>5</sup>Horii, "A blind spot in international human rights framework: a space between tradition and modernity within the child marriage discourse."

<sup>6</sup>Susan A. Bartels, Saja Michael, and Annie Bunting, "Child Marriage among Syrian Refugees in Lebanon: At the Gendered Intersection of Poverty, Immigration, and Safety" *Journal of Immigrant and Refugee Studies*. 19.4 (2021): 472–487.

device of power can provide educational services (scholarships), non-structural activities (capacity building), and education on the impact of the practice of early marriage.<sup>7</sup>

Based on previous studies revealed the factors that influence underage child marriages to take place, among others, but they still reveal a lot about the economic and religious aspects. However, regarding the implications of Law No. 1 of 2019, there has not been a mapping regarding efforts to minimize the practice of underage marriages. Thus this study will review the presentation of underage child marriage after the change in the age of child marriage in the law before revision and after revision and see the implications of changing the standardization of the age of marriage in Law No. 16 of 2019 concerning Marriage.

Based on these questions, this article hypothesises that the practice of child marriage continued to increase significantly both before the Marriage Law was revised, the increase in the practice of marriage including those aged <16 until now has not experienced a significant change. Likewise, the factors that cause the problem of child marriage are classic problems that continue to this day. Thus, to resolve underage child marriages, adjustments to the age of children are needed globally and the same goes for settlement strategies, including the establishment of sanctions and institutional integration, as well as simultaneous age adjustments.

## B. Finding and Discussion

### 1. Post-Revision of the Marriage Law

After the Marriage Law revision was motivated by a lawsuit (Judicial Review) at the Constitutional Court by a number of women activists that child marriage had not yet reached the minimum age threshold, it contradicted women's rights in determining their livelihoods, such as the right to freedom, education, and protection of women and children. Based on the Constitutional Court's decision, there was a significant change regarding the age limit for child marriage, previously set at a minimum of 16 years and changed to 19 years. Changes in the age limit for marriage have an impact on marital integrity. Looking at the minimum age for child marriage in several countries, Yulia Fatma reported that Turkey, Morocco, and Pakistan set a minimum age of 18 years (male and female) and Indonesia 19 years (male and female).<sup>8</sup>

<sup>7</sup>Jennifer McCleary-Sills et al., "Child Marriage: A Critical Barrier to Girls' Schooling and Gender Equality in Education" *Review of Faith and International Affairs*. 13.3 (2015): 69–80.

<sup>8</sup>Yulia Fatma, "Batasan Usia Perkawinan Dalam Hukum Keluarga Islam (Perbandingan Antar Negara Muslim: Turki, Pakistan, Maroko dan Indonesia)" *JURIS (Jurnal Ilmiah Syariah)*. 18.2 (2019): 117.

### a. Child marriage consensus: Law No. 1 of 1974

The consensus on child marriage before the revision was carried out regarding the age limit of the child was that every child has the right to marry at least 16 years of age. However, in practice, it still shows a negative trend. Therefore, the presentation of child marriage based on Statistics Indonesia data specifically for Southeast Sulawesi shows the following:

**Table 1. Presentation of Southeast Sulawesi Statistics Indonesia Data on Child Marriage in 2017-2018**

City District	Age <16 (2017)	Age <16 (2018)
Buton	14,85 %	15,33 %
Muna	11,44 %	11,39 %
Konawe	20,23 %	21,81 %
Kolaka	20,01 %	18,75 %
Konawe Selatan	20,84 %	24,34 %
Bombana	23,85 %	22,82 %
Wakatobi	10,41 %	11,52 %
Kolaka Utara	26,45 %	21,46 %
Buton Utara	16,55 %	16, 87 %
Konawe Utara	16,30 %	19, 25 %
Kolaka Timur	18,56 %	21, 40 %
Konawe Kepulauan	15,45 %	10, 62 %
Muna Barat	12,11 %	14, 03 %
Buton Tengah	9,67 %	9, 38 %
Buton Selatan	13,57 %	9,97 %
Kendari	8,62 %	12,19 %
Bau-Bau	12,59 %	8, 97 %

Presentation of child marriage before Law No. 1 of 1974 was revised if on average all districts/cities in 2017 children under the age of 16 reached 16% who were married. This 16% presentation projects all districts/cities in southeast Sulawesi. Although this presentation shows subjectivity in the data collected, this figure shows that child marriage is still vulnerable in practice. However, comparing the practice of marriage in 2018 shows progress in reducing the trend of the practice of child marriage by showing a percentage of 10% practising child marriage.

The overall percentage of underage child marriages is projected to be 16% (2017) and 10% (2018) based on Southeast Sulawesi Statistics Indonesia data. Child marriage in each regency/city region in 2017-2018, the practice of child marriage as a whole shows an increase in presentation, although not significantly due to the minimum age in Law No. 1 of 1974 still applies at the age of 16 as the minimum age standard for children. However, the presentation in 1 (one) year, even though the trend is not very significant, has

still increased if it is presented to each child population throughout Southeast Sulawesi. However, it is vulnerable for this 1 (one) year that even though some regencies/cities have not experienced an increase, in other areas it has experienced a significant increase, and this can have an impact on other regions.

#### b. Child Marriage: Law No. 16 of 2019

The Marriage Law of 2019 underwent a significant age change from 16 years to 19 years the minimum age for women to be allowed to marry. These changes can be seen in the percentage of child marriages in the last 2 years, namely 2019-2020, including:

**Table 2. Presentation of Southeast Sulawesi Statistics Indonesia Data on Child Marriage in 2017-2018**

City District	Age <16 (2019)	Age 17-18 (2019)	Age <16 (2020)	Age 17-18 (2020)
Buton	16,54 %	20,20 %	13,30 %	17,98 %
Muna	10,74 %	21,56 %	8,21 %	22,86 %
Konawe	17,66 %	23,14 %	18,13 %	21,63 %
Kolaka	18,71 %	21,62 %	16,96 %	22,47 %
Konawe Selatan	19,31 %	27,50 %	22,00 %	24,47 %
Bombana	18,51 %	24,85 %	16,26 %	19,86 %
Wakatobi	13,83 %	22,28 %	16,20 %	24,51 %
Kolaka Utara	20,10 %	17,96 %	22,15 %	17,92 %
Buton Utara	11,67 %	24,43 %	16,81 %	23,37 %
Konawe Utara	15,67 %	23,75 %	19,87 %	24,05 %
Kolaka Timur	20,01 %	22,95 %	18,65 %	18,60 %
Konawe Kepulauan	15,34 %	20,77 %	17,33 %	18,36 %
Muna Barat	12,41 %	24,55 %	12,12 %	23,03 %
Buton Tengah	2,68 %	27,11 %	11,48 %	8,50 %
Buton Selatan	8,19 %	21,58 %	8,50 %	23,28 %
Kendari	7,88 %	17,56 %	9,27 %	16,46 %
Bau-Bau	8,28 %	18,09 %	6,58 %	15,41 %

Based on the 2019 Statistics Indonesia data presentation, if the average minimum age is <16 and 16 child marriages, 14% of those who marry are underage, so referring to the previous presentation, marriage will experience ups and downs (increase) by 4% from before. After the Marriage Law was revised, the practice of child marriage increased to 23% from the age of 17-18. This shows that within 1 year, by calculating the percentage of marriages from <16-18, districts/cities of child marriage achieve an average of around 37% per year who are married.

Whereas in 2020 the age group <16 for marriage is in the 15% position and the vulnerable for ages 17-18 shows a 19% average percentage of child marriage in all districts/cities of Southeast Sulawesi. Looking at the

presentation by classifying the vulnerable age the age <16 has increased by 1% compared to age 17-18. Looking in detail at districts and cities regarding child marriage is one of the triggers for increased marriage practices influenced by the change in the minimum age of 19 years for children in Law No. 16 of 2019 concerning Marriage.

Comparing the minimum age based on Statistics Indonesia census data on the age of child marriage in Law no. 1 of 1974 with Law No. 16 of 2019 that this does not show a significant change in the presentation of child marriage. For example, the 2018 samples are vulnerable to age <16 (10%), 2019 (14%), and 2020 (15%) these presentations, show that there has been an increase in the last 3 years of the practice of child marriage. Therefore, the pretext of increasing the standard age for child marriage in the Marriage Law does not affect minimizing child marriage practices in Southeast Sulawesi, so such changes have a significant impact on preventing child marriage.

## 2. Implications of Law No. 16 of 2019: Child Marriage Practice Entities

### Child Marriage Dispensation

The impact of the revision on the marriage age limit on the children of Muhammad Nur Falah, Auji Imaduddin, and Kholisatul Ilmiyah stated that after the revision, requests and judges' decisions regarding child marriage were also significantly increasing so that the practice of child marriage continued to experience a negative trend.<sup>9</sup> Fitriyani also revealed that the dispensation of marriage is a way to obtain legal status regarding the practice of marriage and on average obtain legality on the grounds of being pregnant out of wedlock.<sup>10</sup> However, Aditi Wahi denied the reason for getting pregnant out of wedlock as a factor in underage child marriage. et.all that most child marriages are not based on the factor of pregnancy, but are based on the will of the family (parents) to continue the marriage.<sup>11</sup> So the massive child marriage basically requires further evaluation of the influencing factors and strategies for solving them

In addition, the practice of child marriage in practice since Law No. 1 of 1974 and Law No. 16 of 2019 (as a result of changes) a dispensation is often

<sup>9</sup>Muhammad Nur Falah, Auji Imaduddin, and Kholisatul Ilmiyah, "Kenaikan Batas Usia Perkawinan Menurut Undang-Undang Nomor 16 Tahun 2019 dan Implikasinya Terhadap Kenaikan Angka Perkara Dispensasi Nikah di Pengadilan Agama Pematang" *The Indonesian Journal of Islamic Law and Civil Law*. 1.2 (2020): 167–182.

<sup>10</sup>Abd.Basir Fitriyani, "Dispensasi Pernikahan Dini Pasca Revisi Undang-Undang Perkawinan di Indonesia" *Jurnal hukum*. 18.1 (2022): 36.

<sup>11</sup>Aditi Wahi et al., "The Lived Experience of Child Marriage in the United States" *Social Work in Public Health*. 34.3 (2019): 201–213.



used as an alternative by the community (parents). Besides that, the Constitutional Court and the DPR have also provided support for the minimum age and decided by the DPR with a minimum limit of 19 years for children to get married. Even before the revision is carried out, it is necessary to carry out a further evaluation related to the existence of the Marriage Law regarding implementation and problems that are taking place in the field to identify the factors that cause the practice of child marriage to be so massive.

### **3. Marriage Education: Lack of Education, KUA Involvement and Child Protection**

#### **a. Involvement of the Office of Religious Affairs**

Regarding child marriage, the involvement of structural devices in carrying out its function in minimizing child marriage still needs evaluation. Andi Jayanti revealed that resolving child marriages needs further structural evaluation starting at the central-regional level regarding the high rate of underage child marriages.<sup>12</sup> Likewise, Heri Kurniawansyah, Ahmad Budi Kurniadi, and Muhammad Yamin emphasized the lack of evaluation of the KUA program to suit the needs and problems that occur in the community.<sup>13</sup> Lack of evaluation and guidance related to the impact of child marriage is one of the factors that continue to be massively practised by the community because administrative prevention is not effective enough to minimize child marriage.

#### **b. Women's Empowerment and Child Protection**

Minimizing child marriage is not only centred on the religious affairs office, but other institutions, including the empowerment of women and children and social institutions, have an important role. Besse points out that programs that minimize child marriage are a strategic combination that is important to implement empowering girls, mobilizing families and communities, providing economic incentives, increasing access to education and establishing/enforcing laws and policies.<sup>14</sup> These five indicators should become a program to tackle the ever-increasing number of child marriages.

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<sup>12</sup>Andi Jayanti, "Perilaku pernikahan dini masyarakat di Kecamatan Onembute Kabupaten Konawe ditinjau dari theory of reasoned action" *Indonesian Journal of Education and Humanity*. 1.1 (2021): 54–62.

<sup>13</sup>Heri Kurniawansyah, Ahmad Budi Kurniadi, and Muhammad Yamin, "Evaluasi Program Penyuluh Agama Islam Pada Kantor Urusan Agama Kecamatan Sumbawa Kabupaten Sumbawa" *Jurnal Kapita Selekt Administrasi Publik*. 3.1 (2022): 123–131.

<sup>14</sup>Thais Bessa, "Informed powerlessness: child marriage interventions and Third World girlhood discourses" *Third World Quarterly*. 40.11 (2019): 1941–1956.



The role of women's empowerment and protection institutions shows a positive trend towards the practice of child marriage. This can be shown from 2017-2018 (Law No. 1 of 1974) and 2019-2020 (Law No. 1 of 2020) regarding child marriage continuing to increase. Khadijah Azimi revealed that child marriage must have special attention and until now there is no picture of resolving child marriage which continues to increase every year practised by the community.<sup>15</sup>

#### 4. Revision: Amendments Do Not Accommodate Facts of Child Marriage

Changes to legislation are one of the excuses for legislators to address the practice of child marriages under the age group. However, these changes were not based on various considerations of actual facts in the field. The practice of child marriage in Southeast Sulawesi from 17 Regencies/Cities in 2017 child marriage reached 16% and in 2018 the index fell to 10% with ages under 16 years, while 2019 reached 37% for ages before 16-18 years and 2020 reached 34 from the age before 16-18. Based on the presentation, shows that the problem of child marriage occurs in the culture of society, especially child marriage.

Comparing the age of child marriage after the MARRIAGE LAW revision from 2019-2020, the vulnerable age <16 reached 29% and 17-18 years 42%. Whereas there has been no significant change in the practice of child marriage and these changes indicate a significant number of child marriage practices due to the high minimum age of marriage. Kamaruddin, Yaqub, and Iswandi analyzed that the practice of child marriage continued due to the social culture and institutional structure that did not play an active role in overcoming the problem of child marriage. Furthermore, legislators do not pay attention to the reality of marriage and the factors that cause child marriage to continue.<sup>16</sup>

#### 5. Post-Revision Evaluation of Law No. 16 of 2019

##### a. Evaluation of Law No. 16 of 2019

Formation (revision) of Law No. 1 of 1974 on changes to Law No. 16 of 2019 concerning marriage that the evaluation and analysis of the legislature forming party has many mistakes in seeing the facts related to child marriages. One of the recommendations of Law no. 13 of 2022 concerning the Formation of Legislation in article 97C shows that in addition to paying attention to elements of the statutory hierarchy, evaluation and further analysis of the

<sup>15</sup>Khadijah Azimi, "The trend of girl child marriage in Iran based on national census data" *Sexual and Reproductive Health Matters*. 28.1 (2020): 1–4.

<sup>16</sup>K Kamaruddin, Andi Yaqub, and I Iswandi, "Paradoxical Implications of Article 7 Paragraph 1 of the Marriage Law in Indonesia" *Substantif Justice: International Journal of Law*. 4.2 (2021): 182–194.

feasibility of revising the law is carried out. It means evaluation and analysis with attention to priority facts before changes are made

Likewise, the basis for forming this law is actually this Marriage Law that should pay attention to the Omnibus, a policy regarding an agreement on the age of the child. However, the age of the child specified in the Marriage Law is at least 19 years old, while the standard child age agreed upon by the Ministry of Women's Empowerment and Child Protection is at least 18 years old. Therefore, based on the results of the revision, the child-age omnibus became polemical because there was diversity in each institution in the policies pursued. The existence of standardization of the age of children varies, so the impact on child protection is often postulated by the commodity of women related to violence which always arises due to child marriages that are not old enough.

#### **b. International Standard Marriage Age Adjustment**

Elisa Scolaro et al showed that the consensus minimum age for child marriage in various countries set an average of 18 years as the standard for child marriage. This rule is an internationally established standard (UN) that the age of a child is at least 18 years and over.<sup>17</sup> Irem Ebetürk emphasized that female legislators and the majority of Muslims are fighting for marriages to be adjusted globally, namely at least 18 years old. Likewise, marriage according to the 1974 Law does not have a significant influence in breaking the practice of child marriage.<sup>18</sup>

#### **c. Establish Sanctions Againsts Child Marriage Practices**

Based on Law No. 1 of 1974 (Before Revision) and Law No. 16 of 2019 (After revision) substantial marriage arrangements do not have legal consequences and are firm in the Marriage Law. In contrast to the system built in Pakistan, it has been established that a child can be prosecuted for a minimum of 1 month in prison and a fine of 1,000 rupees for those who are proven to have entered into a child marriage under the age of 18.<sup>19</sup> Hoko Hirii revealed that the application of sanctions for underage child marriages has been proven to reduce the entity of child marriages after the imposition of sanctions on violators

<sup>17</sup>Elisa Scolaro et al., "Child Marriage Legislation in the Asia-Pacific Region" *Review of Faith and International Affairs*. 13.3 (2015): 23–31.

<sup>18</sup>Irem Ebetürk, "Global diffusion of laws: The case of a minimum age of marriage legislation, 1965–2015" *European Journal of Cultural and Political Sociology*. 8.3 (2021): 294–328.

<sup>19</sup>Fatma, "Batasan Usia Perkawinan Dalam Hukum Keluarga Islam (Perbandingan Antar Negara Muslim: Turki, Pakistan, Maroko dan Indonesia)."

Likewise, the jurisprudence of judges that pregnancies outside <sup>20</sup> of marriage are still underage, so a man is considered to have committed a sex crime and can be subject to criminal sanctions.<sup>21</sup> The imposition of sanctions on perpetrators can be relatively applicable because bearing in mind the 1974 and 2019 (present) Marriage Law do not contain sanctions except for limiting children's rights before reaching the age required by law. So that the practice of marriage in Indonesia, if you examine it more deeply, is given leeway for the community to enter into marriages that are still underage.

The fact existence of Law No. 16 of 2019 still needs to be considered regarding the determination of the minimum age by uniforming the minimum age agreed upon <sup>29</sup> by the international community. Aligning the age of child marriage, criminal sanctions and the application of administrative fines are fundamental instruments for the public to provide false information when applying for marriage dispensation. So the implementation process requires a device to identify when a marriage dispensation application is made.

#### d. Institutional/Agency Integration

Integration of institutions/agencies in overcoming the practice of underage marriages is an alternative to suppressing representations of marriages that are not in line with <sup>36</sup> the applicable laws and regulations. the role of urgent institutions to consider as <sup>4</sup> a step in providing education to the community (parents) and children.<sup>22</sup> <sup>3</sup> Susan B. Schaffnit, Mark Urassa & David W. Lawson revealed that child marriages took place because their children dropped out of school or even they did not continue their education. chose to marry off his children rather than being unproductive at his age. Therefore, on average, parents want marriage for their children even though this practice is not in line with regulations.<sup>23</sup>

Therefore, this article agrees with Thais Bessa stating that in minimizing the practice of marriage the role of government agencies and/or

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<sup>20</sup>Nicolai Groepler, <sup>38</sup> Johannes Huinink, and Timo Peter, "Does the birth of a child still prompt a marriage? A comparison of Austria, France, Germany and Hungary" *European Societies*. 23.3 (2021): 333–359.

<sup>21</sup>Hoko Horii, "Pluralistic legal system, pluralistic human rights?: teenage pregnancy, child marriage and legal institutions in Bali" <sup>23</sup> *Journal of Legal Pluralism and Unofficial Law*. 51.3 (2019): 292–319.

<sup>22</sup>Kazi Kabeya Ame, <sup>15</sup> "Overcoming the curse of early marriage in Bangladesh" *Asian Journal of Women's Studies*. 19.4 (2012): 150–163.

<sup>23</sup>Susan B. Schaffnit, <sup>9</sup> Mark Urassa, and David W. Lawson, "'Child marriage' in context: exploring local attitudes towards early marriage in rural Tanzania" *Sexual and Reproductive Health Matters*. 27.1 (2019): 93–105.

the government can provide educational services such as scholarships for children who are less able to continue their education. However, the reality is that policymakers ignore the complexity of the practice of child marriage and continue to ignore it in order to find solutions and alternatives.<sup>24</sup> So it is necessary to think about intensive education for children who are vulnerable to marriage and who are not old enough. One intensive education includes formal education and non-formal education to classify community groups for collective education on the effects of child marriage, including groups of girls from youth to adulthood and parents to socialize regarding the understanding of the marriage system according to applicable laws.

### C. Conclusion

The Marriage Law revision (UU No. 16 of 2019) has an impact on child marriage rates, both aged <16 from 2018-2020 as well as those aged 17-18 from 2019-2020 experiencing significant presentations. The change (revision) of the Marriage Law constructed that marriage age did not have a positive impact on the resolution of child marriages because it did not take into account other factors such as a sociological review before setting a minimum age for marriage. Likewise, the facts argued by the petitioner at the Constitutional Court and the legislative process at the DPR, these facts contain elements of subjectivity and are not factual because substantially the above can be stated without revising the age of marriage. However, the change in age standard is an essential fact because it can be proven that the practice of marriage has increased significantly.

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<sup>24</sup>Bessa, "Informed powerlessness: child marriage interventions and Third World girlhood discourses."

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