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Inaugural Lecture  
March 9, 2022

## **STRONG RIGHTS, FRAGILE PEOPLE. THE POLITICS OF FREEDOM OF RELIGION OR BELIEF (FORB).**

Nelly van Doorn-Harder

### **ON BEING HUMAN TOGETHER**

“My humanity is bound up in yours. For we can only be Human Together.”  
This observation by Archbishop Desmond Tutu gets at the heart of what I am addressing in this writing. I am placing this quote in the context of current developments within the world of FORB; the right to freedom of thought, conscience, religion, or belief, often referred to as ‘religious freedom’ or most commonly as ‘freedom of religion or belief’ (FORB). My focus is especially on some of the many challenges individuals and groups are facing in freely exercising this fundamental and universal human right that is articulated in Article 18 of the 1948 Universal Declaration of Human Rights (UDHR) that has been signed by over 190 member states of the UN. Since then, this right has been elaborated on, followed up by the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and has been refined in other international human rights treaties. By now, most countries across the globe have accepted it as a basic human right. However, FORB is a contested right; the more real-life cases we explore, the more we see that accepting a right does not necessarily mean applying it. Many individuals and groups feel their faith and practices do not count in the FORB package. Others, for example, girl brides in Indonesia have never heard of this right and have no idea that it applies to them as well. One of the burning questions facing legal specialists, activists and other defenders of FORB is how to overcome obstacles to applying this right, and how to create conditions and circumstances where there is a space for FORB; a space for the individual’s right to practice their faith and beliefs.

In this essay, I focus on Muslim attitudes and ideas about child marriage in Indonesia and present examples of how Muslim feminists and activists there try to give the ideals of FORB hand and feet at the grassroots level where they affect the real lives of real women. While child marriage among Muslims is grounded in certain interpretations of the Islamic sacred text of the Tradition, it is also heavily influenced by cultural, social, moral, as well as economic considerations. When a child bride is forced to marry an older man without her consent, those advocating for her rights see her basic human rights infringed upon. At the same time, the people violating her rights (her guardian, the husband), quote sacred texts that they believe support their God-given rights.<sup>1</sup> The Indonesian activists whose work I study, strive to find solutions for this type of situations where it seems impossible to find a way out. In the end, their work often comes down to bringing their battles to legal

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<sup>1</sup> See, among others, Ali, Mukti, Roland Gunawan, Jamaluddin Mohammad, and Ahmad Hilmi. *I, You, End: Re-Reading Religious Texts about Child Marriage*. (Jakarta: Rumah Kitab, 2015). “From Shame to Guilt. Indonesian Strategies against Child Marriage.” In: Kellenbach & Bushmeier. *Guilt a Force of Cultural Transformation*. (Oxford & New York: Oxford University Press, 2022) 59-76.

courts, as well as the courts of public opinion. They are trying to change deeply engrained mindsets, perceptions, and prejudiced ideas. Muslim feminist Nina Nurmila warns us that changing pervasive mindsets is hard and slow work. In fact, in Indonesia it has been ongoing for over a century when women's organizations started to demand education for women and more protections within the marriage.<sup>2</sup> They asked men to be human together.

### **MUSLIM CHILD BRIDES IN INDONESIA; AN INTRODUCTION**

Child marriage is a practice that embodies Indonesia's multi-layered and complex legal and religious reality. In many areas it is culturally accepted, at the same time the official marriage law from 1974 forbids it, in 2018, the president, Jokowi, banned it by Presidential Decree, and in 2019, a law was passed raising the minimum age for marriage from sixteen to nineteen for both parties.<sup>3</sup> In this essay, I focus on Muslim child brides. However, across Indonesia, many non-Muslims practice it as well. In fact, despite all these rules and laws, the practice is widespread across Indonesia. Many Muslims refer to Islamic legal injunctions that allow the practice, and find support for their arguments from local preachers, scholars, or judges at the Islamic Court.<sup>4</sup>

To Muslim feminists and activists, in the twenty-first century, this reality is no longer acceptable. Medical, social, and other research has shown that marrying young does considerable harm to a girl. It threatens her reproductive health. It also leads to economic disadvantage; with little education, young women who have children and whose marriages end in divorce face a lifetime of poverty. Based on these negative consequences, child marriage is now considered to be a prime form of violence against women.

When everything is said and done, it is the child's male guardian who holds primary decision-making power in her life.<sup>5</sup> Before she marries, a girl or a woman is under the protection of her guardian, wali, which means that this guardian oversees her life and makes decisions about her eventual marriage. The wali is always a man: before marriage, this is her father, brother, or uncle, and it becomes her husband when she is married. In this sense, marriage is a contract whereby the woman's wali transfers her to the protection of her husband. Even if the rest of the family is against her marrying young, the male person who holds this legal power, has the final word. Needless to say, activists know that whatever educational or other campaign they organize, to bring about lasting change they must include the guardians.

I will return to the Indonesian situation by the end of this writing. But before doing that, let me first give you some background about the broader observations about FORB and

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<sup>22</sup> Nina Nurmila. *Women, Islam and Everyday Life. Renegotiating polygamy in Indonesia*. (London, New York: Routledge, 2009) p. 46-52).

<sup>3</sup> Reuters Staff, "Indonesia raises minimum age for brides to end child marriage. September 17, 2019. <https://www.reuters.com/article/us-indonesia-women-marriage/indonesia-raises-minimum-age-for-brides-to-end-child-marriage-idUSKBN1W212M>

<sup>4</sup> Some of the foundational Qur'anic teachings that feminists refer to are: justice for all and equality between men and women (Q. 33:35); women and men were both created from the same spirit (*nafs*) (Q. 4:1, 6:98, 7:189); equality, especially concerning religious observance (Q. 33:35); and husband and wife as "each other's garments" (Q. 2:187).

<sup>5</sup> Rumah Kitab. "Discussion: Wilayah (Guardianship) and Qiwamah (Protection) of Females." Unpublished Activity Report. Jakarta, 2018.

explain what we mean with limitations, why it calls up so many heated debates, and most of all why it matters.

## **FORB: A COMPLEX WEB**

### RELIGION

Talking about religious freedom is like talking about justice, love, or friendship. We all support it; we surely want it for ourselves, but we also feel that for many reasons we should place conditions on this right for others. In our view, these ‘others’ might threaten, oppose, or challenge our values, morals, social order, even civil society. FORB, writes Heiner Bielefeldt functions as “a door opener for other human rights, in particular freedom of expression, freedom of peaceful assembly, and freedom of association. In short, FORB enjoys the reputation of a ‘classical’ human right.”<sup>6</sup> So FORB is foundational to several important human rights. It is a beautiful right as long as we leave out the question about what exactly we mean by it. It is among the most contested human rights that continues to create political, legal, theological, and philosophical controversies. It triggers “ambivalent reactions” and carries “an additional source of provocation” namely religion” since we don’t quite know how to define religion.<sup>7</sup>

In the USA, debates about what exactly the concept of ‘religion’ or ‘faith’ stand for erupted in 2013, when then President Obama announced the creation of a new office in the US Department of State that would focus on engagement with faith-based religious institutions around the world to strengthen US development and diplomacy and advance America’s interests and value.” The office envisioned tackling widespread religious persecution and violence overseas,” and to further “institutionalize an official US commitment to globalize religious freedom, marginalize extremism, and promote interfaith dialogue and religious tolerance.”<sup>8</sup>

Scholars invited to react to this new plan represented the different concerns and questions we need to take into consideration when speaking about FORB. Among others, they asked: What and who exactly the USA was planning to engage with through religion, and what type of religion? Was it an officially accepted state religion? For example, would local religions be included? Many countries fail to include indigenous religions into their definition of religion. Indonesian scholar Zainal Bagir points out that “world religions have also contributed to the marginalization of indigenous people by propagating the stigma of them “having no religion” and targeting them as an object of conversion.”<sup>9</sup> Forty-one countries forbid Jehovah’s Witnesses and Baha’is to practice their faith.<sup>10</sup> And then there are groups such as the Star Wars-inspired

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<sup>6</sup> Heiner Bielefeldt and Michael Wiener. *Religious Freedom under Scrutiny*. (Philadelphia: University of Pennsylvania Press, 2020), 1.

<sup>7</sup> Bielefeldt & Wiener (2020), 3.

<sup>8</sup> “Engaging Religions at the Department of State.” Immanent Frame, July 13, 2013. <http://tif.ssrc.org/2013/07/30/engaging-religion-at-the-department-of-state/>

<sup>9</sup> Afifurrochman Sya’rani, “Developing an “ecological conversion” within world religions,” report CRCS-ICRS Forum, May 8, 2019, <https://crcs.ugm.ac.id/developing-an-ecological-conversion-within-world-religions/>.

<sup>10</sup> Samirah Majumdar, “41 countries ban religion-related groups; Jehovah’s Witnesses, Baha’is among the most commonly targeted. November 15, 2021: Pew Research Center, <https://www.pewresearch.org/fact->

Temple of the Jedi Order that is officially recognized in the USA. After reading their sermon published on January 17, 2022 on “Building a Light Saber, “I suspect that they might have difficulties obtaining religious status in many countries outside the USA.<sup>11</sup> Going back to the USA office, some also wondered how it would deal with systemic injustices such as social, gender, economic, historical, environmental types of injustice that are rampant in many countries? Would it engage with those problems as well?<sup>12</sup>

## THE COURTS

Now I have introduced you to the confusion surrounding the concepts of religion and faith, I will address some of the realities individuals and groups face when they do try to defend their rights by going to court. Famous cases continue to make headlines, for example, about mandatory vaccination against children’s diseases (no, I am not talking about the Covid controversy that is currently raging through our countries), refusing to bake a wedding cake for a gay couple, or wearing the burka in public. Talking about FORB can lead us into a complex web of legal and religious reasoning. One of the most prominent cases of our times is the ban on abortion in Texas that went into effect on the first of September 2021. This case shows how complex the different forms of reasoning are that support or forbid the practice. To many, allowing or denying abortion is based on religion. Especially advocates who are against it refer to their private religious beliefs.

Some pro-abortion advocates base their arguments on religion as well and it is not forbidden in all religion. According to a survey taken in the USA, Buddhists, remain neutral on the question of pro or con, 83% of the Jewish population in the USA finds that it should be allowed, the majority of evangelical Christians is against it, and the majority of mainstream churches support a woman’s right to have an abortion.<sup>13</sup> In Texas, a group called the Satanic Temple that was founded in 2013 and is registered with the tax authorities as a religious community, created an “abortion ritual.” Based on this ritual the group launched a court case appealing to the Religious Freedom Restoration Act (RFRA), demanding exemption from abortion restrictions based on religious grounds.<sup>14</sup> Testing the judicial system, the group has initiated similar cases in other states that restrict or ban abortion.

Most pro-abortion advocates, however, argue that forbidding it infracts on a woman’s reproductive rights and her agency to decide on her own body: more than fifty years ago, Dutch feminists who called themselves Dolle Minas expressed this sentiment with the slogan that they were: “baas in eigen buik” (boss over your own belly). At the same time,

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tank/2021/11/15/41-countries-ban-religion-related-groups-jehovahs-witnesses-bahais-among-the-most-commonly-targeted/

<sup>11</sup> <https://www.templeofthejediorder.org/sermons/2820-building-a-lightsaber>

<sup>12</sup> See the discussion between 17 scholars of religion and FORB on the Immanent Frame, July 13, 2013.

<sup>13</sup> See the 2014 Pew research on views about abortion in the USA: <https://www.pewforum.org/religious-landscape-study/views-about-abortion/>

<sup>14</sup> Joseph P. Laycock, “How the Satanic Temple is using ‘abortion rituals’ to claim religious liberty against the Texas’ ‘heartbeat bill’”, *The Conversation*. <https://theconversation.com/how-the-satanic-temple-is-using-abortion-rituals-to-claim-religious-liberty-against-the-texas-heartbeat-bill-167755>

many pro-life advocates say that the right to life should always outweigh the right of an individual to equality or control over their own body.<sup>15</sup>

Such cases give the impression that religious beliefs steer the outcome of legal decisions. However, as we can see in the fight in Texas, in the end, politicians create laws and courts decide if the political reasoning behind these laws is correct or not. While pro and anti-activists work hard to convince the population about the correctness of their stance, the voices of politicians and legal scholars matters most.

## **STUDYING RELIGION**

We, scholars of religion, study and discuss FORB-related matters while neither being lawyers nor politicians. On the face of it we seem voiceless. At the same time, we belong to the people who create awareness of the pressing need for teaching about tolerance and nondiscrimination at multiple levels: within the family, society, religious communities, political parties, and the media. We train students to internalize the values supporting human rights and, we agree with human rights specialist Abdelfattah Amor that “Inter-religious dialogue is essential for the prevention of misunderstandings, conflicts, and violations of freedom of religion or belief.”<sup>16</sup> In the end, we produce materials that legal specialists can refer to on the rare occasion a case makes it to court.

Most of my research and teaching concerns the basic rights of women and religious minorities. While an ever-growing group of specialists debate the role and nature of religion in national and international conflicts, some have suggested that instead of looking at the official systems, we should train the eye on “lived religion” or “everyday practices.”<sup>17</sup> That is precisely the type of research my colleagues, my students and I do: we study and analyze texts and do ethnographic observations in the field in order to understand the religious interpretations and theological discourses that steer the daily practices of believers. Over the course of my career, I have researched questions related to the practices and interpretations of and about Muslim women in Indonesia and Coptic Christian women in Egypt.<sup>18</sup> Although one belongs to the majority and the other the minority religions of their country, their plight overlaps as they face patriarchal systems, cultural practices, for example in Egypt, there are Coptic communities that still practice female genital mutilation, and other gender-based forms of discrimination.

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<sup>15</sup> For a long and accessible discussion about this issue, see [https://www.bbc.co.uk/ethics/abortion/mother/against\\_1.shtml#h1](https://www.bbc.co.uk/ethics/abortion/mother/against_1.shtml#h1)

<sup>16</sup> Abdelfattah Amor, United Nations Special Rapporteur on Freedom of Religion or Belief, *Facilitating Freedom of Religion or Belief: A Desk book*. (Leiden: Brill, 2004) xvii.

<sup>17</sup> See, for example, Elizabeth Shakman Hurd. *Beyond Religious Freedom the New Global Politics of Religion*. (Princeton & Oxford: Princeton University Press, 2015).

<sup>18</sup> For examples in my own work see: *Kebebasan Beragama Di Tingkat Akar Rumput*. With Mega Hedayati. Edited volume in Indonesian, *Religious Freedom at the Grassroots: An Analysis of Case Studies*. (Yogyakarta: Interfidei, 2018). *Copts in Context: Negotiating Tradition, Transition and Modernity*. Edited volume. (Columbia, SC: The University of South Carolina Press, 2017). *Dubbele Dialoog, De rol van Gender in interreligieuze ontmoetingen*. (Double Dialogues. The Role of Gender in Inter-religious Encounters). Edited with Riet Bons-Storm. (Publishing House Narratio: Gorinchem, March 2012). *Women Shaping Islam. Indonesian Muslim Women Reading the Qur'an*. (Champaign-Urbana & Chicago: University of Illinois Press, 2006). *Contemporary Coptic Nuns*. Columbia, SC: University of South Carolina Press, 1995.

This type of research reveals that many hidden forms of violence and discrimination that influence the lives of women are based on how believers interpret their religious texts. Most of them don't engage in these interpretations themselves but access them via sermons, radio shows, religious study groups, and traditional ideas that are transmitted within their communities.<sup>19</sup> Violence and discrimination in the name of religion against women, children, and LGBTQ+ individuals, often takes place within the local context of the village, the neighborhood, institutions. Across the world, girls and women are still forced to marry against their will. The victims seldom realize that what happens to them is a violation of their basic human rights. They have neither the tools to understand the texts that sanction their experience, nor the means to appeal to the legal systems that often are populated with biased judges who are of the same mindset as those violating the girl's rights.

### **FORB: IMPOSSIBLE RIGHTS?**

By now we understand that applying FORB in real life faces many obstacles and limitations. At times it seems impossible to appeal to this right.<sup>20</sup> From a legal point of view, very few individuals or groups gain access to the legal courts. If they make it to court at all, often the decisions tend to prioritize the majority and traditional religions. There is a gap between the theory and the practice as defined by the original charters. Legal and political systems have designed creative justifications to increase the number of limitations, especially those placed on the rights of individuals.<sup>21</sup>

Local case studies continue to show the difficulties we face when applying FORB for all.<sup>22</sup> At the same time, these real life cases also show that religious freedom is not an abstract and a-political universal idea but a heavily politicized, and "deeply ambiguous, even at time duplicitous, legal standard inevitably embedded within and

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<sup>19</sup> For some examples, see: Julian Millie. Hearing Allah's Call. *Preaching and Performance in Indonesian Islam*. (Ithaca: Cornell University Press, 2017), Meschnonnic, Henri, Pajevic, Marko, and Pier-Pascale Boulanger. *The Jihadist Preachers of the End Times*. (Edinburgh: University of Edinburgh Press, 2019), as well as: "Purifying Indonesia. Purifying Women: The National Commission for Women's Rights and the 1965-66 anti-Communist Violence," *CrossCurrents Journal* (fall 2019), open access via: <https://onlinelibrary.wiley.com/doi/full/10.1111/cros.12380>, and "From Shame to Guilt," 59-76, "Mother Irini's Visions of Leadership: Pachomian Rule and Teaching of the Fathers." In: *Copts in Modernity*. 270-294, and "Women's Adab in the Pesantren : Gendering Virtues and Contesting Normative Behaviors." in: R. Rozehnal (ed.) *Piety, Politics and Everyday Ethics in Southeast Asian Islam*. (Bloomsbury, 2018), 101-121.

<sup>20</sup> In a special 2020 issue of the journal *Religion and Human Rights*, commissioned by the Oslo Coalition on Freedom of Religion or Belief several specialists in the field discussed how various domestic and international bodies are in fact imposing limits on religious freedom. Taken together, the different case studies showed that few cases dealing with limitations to FORB make it to a domestic court and even fewer to an international body.

<sup>21</sup> See the editorial page of the special issue: *Religion and Human Rights* 15 (2020) vol. 1 & 2, p. 1.

<sup>22</sup> This growing awareness has increased the number of studies questioning the universality of FORB. For example: *The Impossibility of Religious Freedom* (Winnifred Fallers Sullivan, 2003), *Beyond Religious Freedom* (Elizabeth Shakman Hurd, 2015), *Politics of Religious Freedom* (Sullivan, Hurd, Mahmood & Danchin, 2015), *The New Religious Intolerance* (Martha Nussbaum, 2012), and *Religious Freedom under Scrutiny* (Bielefeldt & Wiener, 2020).

nanced by political struggles.”<sup>23</sup> We need to take seriously voices who remind us that nobody’s identity consist of religion only but is composed of “political affinities, historical or geographical ties, neighborhood or occupational affiliations.”<sup>24</sup> Elizabeth Shakman Hurd warns us not to create ecologies based on religious difference only but to pay attention to the many other factors that create social tensions, discrimination, conflicts and polarization.<sup>25</sup> The current conditions created by the COVID-19 virus provide telling examples of this reality.

On paper, most governments have recognized the basic right to Freedom of Religion or Belief. However, many sign the official documents without embracing the practical consequences of allowing full rights to all religious groups. According to a 2018 report of the Pew Foundation, during the year 2016, almost every country in the world had pledged to uphold FORB. During that same year, there was a “surge in government restrictions on religion, with populist parties and organizations in Europe increasingly fueling harassment of and restrictions on religious minorities. 83 countries (42%) had high or very high levels of restrictions on religion – whether resulting from government actions or from hostile acts by private individuals, organizations and social groups – up from 80 (40%) in 2015 and 58 (29%) in 2007.”<sup>26</sup>

This Pew report puts the spotlight on the reality that we in the West like to think that it is mostly countries in the so-called third world that fail to protect the religious rights of certain communities and individuals. However, many Western or so-called developed countries, not in the least the country where I live, the USA, design subtle and not so subtle efforts to restrict human rights, including freedom of religion. In a by now famous video clip, Congresswoman Alexandria Ocasio Cortez, or AOC, tells her fellow lawmakers how she is tired of the fact that “the only time religious freedom is invoked is in the name of bigotry and discrimination.”<sup>27</sup> As statistics show, and many Americans have observed within their own environment, under the influence of far-right groups and extremist online forums religious and ethnic discrimination such as Islamophobia and Antisemitism have increased across the USA.

Finally, another problematic side of FORB is that many suspect it to be a Protestant invention and a tool of Western hegemony.<sup>28</sup> Religious freedom means different things to different groups. However, the fact that a concept is hard to define, or was invented by a certain group of people, does not mean it does not exist.<sup>29</sup> It is a reality that freedom of religion has come under attack from different sides. As I mentioned earlier, especially the category of ‘religion’ evokes much criticism. So far, the verdict is that it is impossible to define since our definitions are always partisan and often prioritize the dominant or

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<sup>23</sup> Winnifred Fallers Sullivan, Elizabeth Shakman Hurd, Saba Mahmood, and Peter G. Danchin, ed. *Politics of Religious Freedom*. (Chicago: the University of Chicago Press, 2015), 8,9.

<sup>24</sup> Shakman Hurd, *Beyond Religious Freedom*, 39.

<sup>25</sup> Shakman Hurd, *Beyond Religious Freedom*, 39.

<sup>26</sup> <https://www.ippforb.com/toolkit/what-is-forb>

<sup>27</sup> [https://www.youtube.com/watch?v=Upa2Rk\\_Y1Z0](https://www.youtube.com/watch?v=Upa2Rk_Y1Z0)

<sup>28</sup> See, for example, Tisa Wenger. *Religious Freedom. The Contested History of an American Ideal*. (Chapel Hill, NC: the University of North Carolina Press, 2017).

<sup>29</sup> Daniel Philpott. *Religious Freedom in Islam. The Fate of a Universal Human Right in the Muslim World Today*. (Oxford: Oxford University Press, 2019), 31.



majoritarian beliefs.<sup>30</sup> Heiner Bielefeldt points out that these critics would be right if it is religion that needs protection. That is not the case. It are the individual believers who need protection and “Conceptualizing freedom of religion or belief as a universal human right means, above all, to respect the self-understanding of human beings.”<sup>31</sup> At the same time, Bielefeldt explains “To put it in a nutshell, the guiding idea underpinning the human rights approach is to empower human beings so that they can find their own ways freely, including in the area of religion and belief, as long as their acts are compatible with the equal freedom of others.”<sup>32</sup>

So we are back to being human together. One way to reach that ideal is by empowering women who face different forms of violence, including the practice of child marriage. Below I explain how Muslim activists for women’s rights in Indonesia are translating some of the high-level, international United Nations conventions into actions.

## **VIOLENCE AGAINST WOMEN**

### **CEDAW**

During the 1990s, when I did fieldwork among Muslim feminist leaders and activists in Indonesia, I noticed that many of them mentioned two conventions initiated by the United Nations as a great source of inspiration. In 1979, the UN adopted what is now known as CEDAW: the Convention on the Elimination of all Forms of Discrimination against Women. This convention is considered an international bill of rights for women. It defines what constitutes discrimination against women and sets up an agenda for national action to end it. According to the UN website, “The Convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations.”<sup>33</sup> In 1995, during the Fourth World Conference on Women, now known as the “Beijing Conference” representatives from 189 countries met to affirm women’s rights and equality.

As for the connection between women’s basic rights and FORB, we will always remain in debt to Asma Jahangir, the Pakistani human rights lawyer who served as UN Special Rapporteur on FORB from 2004-2010. She pushed for the connection between the CEDAW agenda and FORB. Walking in her footsteps, the current rapporteur, Ahmad Shaheed, as well as his predecessor, Heiner Bielefeldt, have continued this focus, especially highlighting religious inspired abuse against women. For example, in his 2020 report to the UN, Shaheed focuses on actors all over the world who cite religious justifications to lobby governments and the broader public to impose laws and policies “that directly or indirectly discriminate against women, girls and LGBTQ+ persons.”<sup>34</sup> As some of the harmful practices justified “on the grounds that they are permitted or required by religious beliefs,” he mentions: “female genital mutilation, dowry killings, rape, polygyny, early and enforced marriage, beatings, coercive gender reassignment surgery, and so called ‘honor crimes.’”<sup>35</sup> As I pointed out earlier, these practices are steered by

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<sup>30</sup> Winnifred Sullivan, *Impossibility*, 2005, 151.

<sup>31</sup> Bielefeldt & Wiener, 27.

<sup>32</sup> Bielefeldt & Wiener, 206.

<sup>33</sup> <https://www.un.org/womenwatch/daw/cedaw/>

<sup>34</sup> Report Special Rapporteur presented to the 43<sup>rd</sup> session of the Human Rights Council (February 24-March 20, 2020). A/HRC/43/48, February 27, 2020, 3.

<sup>35</sup> Report 2020, 9.

specific religious sentiments, the interpretation of sacred texts, as well as by local cultures and patriarchal systems. While the equality of men and women is anchored in numerous human rights instruments, gender-related rights continue to cause conflicts since they often clash with traditional gender roles. In short: the field of FORB and women's rights is double controversial. Let us now turn to the case study about child marriage in Indonesia that illustrates this battle.

## INDONESIA

In Indonesia, we find many examples of how the high-level UN agenda was translated into real-life projects aimed at strengthening women's rights. Muslim leaders and activists considered CEDAW and the 1995 resolution as watershed moments for the local Muslim feminist movements that became visible during the late 1980s<sup>36</sup>. Moved by the desire to give the traditional religious texts social and communal relevance, leaders belonging to the two largest Muslim organizations of Muhammadiyah and Nahdlatul Ulama started projects that aimed at reinterpreting the Qur'an and the Tradition through the lens of women's rights. At the same time, Muslim activists opened non-governmental organizations to strengthen the rights of women. Famous Muslim feminist Lies Marcoes-Natsir launched one of the most influential projects on women's reproductive rights. It organized workshops for leaders of traditional Qur'an schools (pesantren) to study Islamic texts through the lens of women's rights, deconstructing the ways men had interpreted these texts.<sup>37</sup> Emerging young Muslim leaders and intellectuals were brimming with ideas to apply the new interpretations about women's rights in their fight against religion-based harmful practices. Application could take on many forms. For example, in 1991, a group I studied closely called YKF (Yayasan Kesejahteraan Fatayat, the Fatayat Welfare Foundation) started building maternity clinics in villages where women lack access to medical care. The goal of such projects was to develop a "transformative, egalitarian, and tolerant" model of Islam and to strengthen women's reproductive rights at the grassroots level.<sup>38</sup>

## KOMNAS PEREMPUAN AND RUMAH KITAB<sup>39</sup>

In 1998, many of these early leaders helped create Komnas Perempuan, (Komisi Nasional Anti Kekerasan terhadap Perempuan), the National Commission on Violence Against Women; the only human rights organization whose focus is just on women's issues.<sup>40</sup> When in the spring of 1998, during the transition period from the suppressive Suharto regime (1966-1998) to democracy, large-scale communal riots erupted, sexual assaults on women increased significantly.<sup>41</sup> This was not the first time such patterns of violence against women occurred. It was an open secret that, during military operations,

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<sup>36</sup> For a history of the movements that started in the 1980s until 2015, see: Etin Anwar. *A Genealogy of Islamic Feminism. Pattern and Change in Indonesia*. (Abdingdon & New York: Routledge, 2018).

<sup>37</sup> Pieterella van Doorn-Harder, *Women Shaping Islam. Reading the Qur'an in Indonesia*. (Urbana and Chicago: the University of Illinois Press, 2006) 190-191.

<sup>38</sup> Van Doorn-Harder, *Women Shaping Islam*, 237-238.

<sup>39</sup> The paragraphs about Komnas Perempuan, Rumah Kitab, and child marriage are for a large part based on my latest publication: "From Shame to Guilt: Indonesian Strategies against Child Marriage." In: Katharina von Kellenbach and Matthias Buschmeier (eds.) *Guilt. A Force of Transformation*. (Oxford & New York: Oxford University Press, 2022) 59-76.

<sup>40</sup> For more information about Komnas Perempuan, see its website: <https://www.komnasperempuan.go.id/>

<sup>41</sup> <https://web.archive.org/web/20000920073842>, and <http://www.serve.com/inside/digest/dig86.htm>

the regime's security forces violated human rights on a staggering scale. Since troops targeted women especially, women activists insisted that the state accept responsibility for this particular form of gendered violence by launching Komnas Perempuan. The organization's goal was to monitor and advise on Indonesia's adherence to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child.<sup>42</sup> Its mandate was to report gender-based human rights abuses and to create awareness about such issues among the Indonesian public. This is a difficult task that requires continuous efforts to highlight the issue of violence against women. From the beginning, one of Komnas' main goals has been to change the mindset that ignores women's plight and blames the victim. At the national level, the organization monitors the application of existing laws protecting women's basic rights and advocates for the formulation of new laws (for example, raising the marriage age for women). To bring its message to a wider audience, it also connects with hundreds of other groups advocating for the rights of women who adapt and disseminate its reports, videos, and other materials to different levels of society.

Lies Marcoes-Natsir is now the director of one of the organizations that supplies Komnas Perempuan with materials about the Islamic teachings on child marriage. It is called Rumah Kitab (Rumah Kita Bersama) and focuses on the interpretation of key religious texts that are used at institutes for Islamic higher education and Qur'an schools.<sup>43</sup> These schools educate the future leaders of Islam, who can become influential voices in helping either to promote or fight against early marriage practices.

Rumah Kitab hopes to reach the students (the santri) at the Qur'an boarding schools called pesantren. Upon graduation, many pesantren students continue their studies at an Islamic university. Eventually, they become part of the vast network of teachers, local imams, judges in the religious courts, and civil servants working in institutions such as the governmental offices that regulate matters of personal status law, such as marriage and divorce. Research has shown that at the grassroots level, village imams and other religious officials are often inspired by radical teachings about the status of women, polygamy, underage, and secret or unregistered marriage.<sup>44</sup> These findings are significant because in the countryside, the poor and the uneducated take their clues from local imams, who advise parents to give their young daughter in marriage and that an unregistered marriage, despite its negative social and economic repercussions, is theologically acceptable since it follows Islamic guidelines.

## CHILD MARRIAGE

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<sup>42</sup> Indonesia is a party to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child. Under these core human rights instruments, Indonesia is legally obligated to protect the rights of girls and women, including their right to freedom from discrimination; to the highest attainable standard of health; to education; to free and full consent to marriage; to choosing one's spouse; and to be free from physical, mental, and sexual violence.

<sup>43</sup> For more information, see the Rumah Kitab website: <https://rumahkitab.com/>

<sup>44</sup> See: Maufur, Noorhaidi Hasan, and Syaifuddin Zuhri. 2014. *Modul Pelatihan Fiqh dan HAM*. (Yogyakarta: LKiS, 2014).

Earlier in this essay, I mentioned how among Muslims across Indonesia, the practice of child marriage is widely accepted since it intersects with local culture, views on the status of women, and the ways they interpret their holy texts. I also mentioned the ongoing conflict between the official laws of the land and local practices. For example, from a legal point of view, marriages involving underage brides (now under nineteen years of age) are contracted in secret, since they cannot be registered at the Office for Religious Affairs (the Kantor Urusan Agama, or “KUA”). Unregistered marriages are not legal. Often, in addition, a young bride becomes part of a polygamous union. The 1974 Marriage Law expressly forbids it and provides strict rules concerning polygamy, making it difficult. When a couple ignores these rules, they are forced to enter a secret marriage that remains unregistered. Not being registered, harms the children born out of these unofficial unions; they are considered illegitimate, a status that affects the child’s entire life.

The complex legal reality and the fact that a large part of Indonesia’s Muslim population (in principle) supports child marriage requires a multi-level approach when fighting against it. Anti-child-marriage activists target politicians who can enforce the official laws, local Muslim leaders who officiate illegal marriages, and local Muslim leaders and judges who interact with the couples in court when they try to get their union registered anyway. Activists also promote re-interpretations of the Islamic holy texts, and request fatwas (non-binding legal advice) against the practice. They appeal to the public opinion, question cultural practices, and organize workshops in the marketplace about gender justice.

To educate the public about the existing laws, the rights of women and children, the risks of marrying early, Komnas Perempuan organizes educational campaigns to inform the public. Their campaigns use the national media, digital platforms, and local meetings in the marketplace, neighborhood associations, and private Qur’an study groups.<sup>45</sup>

Rumah Kitab has produced writings that provide religious leaders with Islamic arguments against the practice. In 2015, the organization published a book re-interpreting the religious texts in the Qur’an and the Hadith with respect to the subject of child marriage.<sup>46</sup> The book is based on extensive research and analyzes the historical and religious context of the practice. Rumah Kitab, when reading and interpreting the holy texts, takes the position that such interpretations should be placed within contemporary contexts and needs. They also should include the rules on child marriage found in Islamic jurisprudence (fiqh).<sup>47</sup> On the sociological level, Rumah Kitab emphasizes that a girl’s schooling, health, and psychological wellbeing strengthen Indonesia’s welfare on various levels.

All the activists find the key to women’s liberation in re-interpreting the Qur’an and the Hadith from the perspective of gender equality. To them, men have misread and abused these texts to subordinate women throughout history, while the holy texts support women’s basic rights.<sup>48</sup> Namely, the activists’ most important religious argument against

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<sup>45</sup>Afifah, Wiwik.. “Pencegahan Perkawinan Dini Menggunakan Publik Space di Taman Bungkul Kota Surabaya.” *Jurnal Masyarakat Mandiri JMM* 2, 2018. p. 189–96, Ali, Mukti, Roland Gunawan, Jamaluddin Mohammad, and Ahmad Hilmi. *I, You, End. Re-reading religious texts about child marriage*. (Jakarta: Rumah Kitab, 2015), and Gunawan, Roland, and Nur Hayati Aida, (eds.) *Fikih Perwalian. Membaca Ulang Hak Perwalian untuk Perlindungan Perempuan dari Kawin Paksa dan Kawin Anak*. (Jakarta: Rumah Kitab, 2019).

<sup>46</sup> Ali, Gunawan, Mohammad, and Hilmi *I, You, End*. 2015.

<sup>47</sup> Ali, Gunawan, Mohammad, and Hilmi *I, You, End*. 2015, p. 23.

<sup>48</sup> Some of the foundational Qur’anic teachings that feminists refer to are: justice for all and equality between men and women (Q. 33:35); women and men were both created from the same spirit (*nafs*) (Q. 4:1, 6:98, 7:189);

child marriage is that God created men and women from one soul to be each other's companions (Qur'an 7: 189 and 4:1);<sup>49</sup> this argument underscores the expectation that a marriage is a union between equals, which is often not the case with child brides, who are markedly younger than their husbands.<sup>50</sup> Such an incompatibility between spouses leads to high divorce rates, unstable families, and an increase in psychological problems.

April 2017, Muslim activists working with Komnas Perempuan, Rumah Kitab, and many other organizations, were part of a revolution of sorts when they organized an international congress now known as "KUPI"—Kongres Ulama Perempuan Indonesia, or, in translation, the Indonesian Congress of Female Ulama [religious authority]. Over 500 feminists from all over the world, male and female, attended this historic meeting. According to one of the organizers, its main goal was to:

Build long-term perspectives on the rights of women that are currently being ignored. Many of these come down to biological and social issues that harm men as well as women. However, what is bad for men is far worse for women. The goal was to formulate what benefits religion and strengthens the welfare of the Indonesian society.<sup>51</sup> It was a universal declaration of equality, a manifesto that women have the same spiritual and mental potentials as men.<sup>52</sup>

After three days of discussing topics such as violence against women, the Congress issued several statements, comparable to religious rulings of a fatwa. One of them called for a total ban on child marriage.

### **CONCLUSION: SHAMING MEN**

The goal of this essay was to introduce to you some of the obstacles and limitations we face when applying the classical and individual human right of FORB. To illustrate the theory, I introduced the challenges Indonesian Muslim activists for women's rights face in their struggle to ban the practice of child marriage.

For many reasons, FORB is among the most contested rights. Among others this reality relates to its main source of provocation, namely religion, a concept we find hard to define. Talking about it leads us into complex webs of legal and religious reasoning with as a result that many observers find FORB impossible to apply. When people make it to court, the decision often sides with the majority or the traditional religion, ignoring many other expressions of faith. To overcome this reality, interreligious engagement that helps us overcome misunderstandings and conflicts is one of the strongest tools we have to protect FORB. The field of FORB and women's rights is double controversial as the basic rule that men and women are equal clashes with traditional patriarchal mindsets and social structures.

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equality, especially concerning religious observance (Q. 33:35); and husband and wife as "each other's garments" (Q. 2:187).

<sup>49</sup> Qur'an 7:89: "It is He who created you from one soul and created from it its mate that he might dwell in security with her," and Qur'an 4:1: "O mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women."

<sup>50</sup> (Ali, Gunawan, Mohammad, and Hilmi *I, You, End.* 2015, 28.

<sup>51</sup> Nur Rofiah, interview, Jakarta, July 6, 2018.

<sup>52</sup> This declaration was referencing the Qur'an verses 7:189 and 4:1.

Where it concerns child marriage in Indonesia, we saw that among Muslims the practice is based on specific interpretations of the Islamic sacred texts of the Tradition, it is also heavily influenced by cultural, social, moral, as well as economic considerations. Muslim activists try to disrupt these realities by teaching, preaching, and publishing about the rights of women, to inform and empower.

It is a long and arduous journey; set mindsets and cultural traditions are hard to change. Creativity is called for, especially where it concerns using the local culture. For example, when all fails, Indonesian feminist Muslim activists use guilt and shame to shame the male guardian into being accountable for the welfare of the young bride. If she divorces and faces a life of poverty, he can be shamed for his failure to protect her. Such guilt strategies aim to change the discourse about women's rights and misogynist practices by appealing to the need for education, which is in the long- term national interest.

Whatever it takes, the activists will not rest until men and women can be human together.

### ***WITH GRATITUDE***

Ending this inaugural lecture, I would like to express my heartfelt thanks to some of the many people in my life who made it possible for me to stand here today and officially accept this new position after a COVID-19 delay of two years. First, I owe a debt of gratitude to Kari Vogt who has been a friend and mentor in both my fields of study and whose unfailing support opened many professional doors for me. I also thank the colleagues at the Faculty of Religion and Theology and the Center for Islamic Theology for appointing me to this position and for their ongoing support. A special thanks go out to Martien Brinkman who was the Dean when I first started here, to Remke Kruk my undergraduate teacher who instilled in me a love for Middle Eastern and Islam Studies, and Anthony Wessels, my PhD supervisor who had the courage to accept a project nobody else wanted to accept. Of course, we will always remember the formidable Henk Vroom who founded the Center for Islamic Theology and was its most ardent supporter. And I am deeply grateful for my amazing colleagues in the Department for the Study of Religions at Wake Forest University who continue to support my work.

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I pray that we all will continue to meet and work at being better humans together.