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Horii, H.

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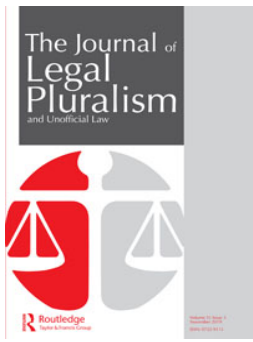
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# Pluralistic legal system, pluralistic human rights?: teenage pregnancy, child marriage and legal institutions in Bali

Hoko Horii 

Van Vollenhoven Institute, Leiden Law School, Royal Netherlands Institute of Southeast Asian and Caribbean Studies (KITLV), Leiden University, Leiden, Netherlands

## ABSTRACT

This article examines how the existence of multiple legal orders can impact the defense of human rights, by discussing how state legal agents in Bali navigate state law through local concerns and *adat* (customary) law in cases dealing with teenage pregnancy outside of marriage. In such “emergencies” where the morality of the community is at stake, families, *adat* authorities and state agents collaborate to find a way to fit these emergency situations into the locally accepted normative system, resulting in what international institutions call “child marriage.” In assessing the interaction between state law and customary law, this study offers a basis for discussing how legal pluralism should be addressed in the realization of human rights.

## ARTICLE HISTORY

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Teenage pregnancy; child protection law; child marriage; Bali; state legal agents

## Introduction

Ratna is a 18-year-old mother, living with her parents and her newborn baby in downtown Denpasar. When Ratna found out about her pregnancy, she had already been separated from the father – Pranata – who is one year younger than her. Ratna’s family then went to Pranata’s family, urging him to “take responsibility” – to marry her – which Pranata’s family refused. Seeing the response, Ratna’s family decided to report the case to the police as a sex crime – prosecution for pre-marital sexual intercourse involving a minor - which could imprison Pranata for years. As the court hearing was approaching, tensions grew between the families. Ratna was becoming nervous, and I was helping her to prepare to testify in court. A few days before the first hearing, I heard from Ratna’s lawyer that Pranata’s family made a marriage proposal, which Ratna and her family decided to accept. Confused, I also heard news that Ratna’s baby had fallen ill and had been hospitalized, so I went to see them in one of the public hospitals in Denpasar. When I entered the room, I saw Ratna’s and Pranata’s families both sitting near the hospital bed where the baby was sleeping. Ratna’s mother, who was previously telling me how evil-minded Pranata’s family was, approached me and asked me shyly:

CONTACT Hoko Horii  [h.horii@law.leidenuniv.nl](mailto:h.horii@law.leidenuniv.nl)

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Mother: “Did you ... hear? About this?” (pointing Ratna and Pranata)

Author: “Yes, I heard.”

Mother: “They are back together.”

Author: “Will they marry?”

Mother: “Yes, but after finishing school.”

Author: “Is that so? But when is their adat (customary) wedding?”

Mother: “Maybe next month, it will just be a small wedding.”

Author: “Will you register marriage in registration office?”

Mother: “No ... only when they are adults (dewasa). Pranata is still 16 years old.”

Author: “I see ..., but you know there is system of dispensation, you can go to the court and ask for dispensation to register your marriage under the minimum age.”

Mother: “(Not really understanding what it is) yes, we will go to the court next Wednesday. Continuation of the case (sex crime).”

Author: “Oh, so the case is still not finished ...”

Remembering this scene still strikes me with confusion. The two families, who were poised to battle in a criminal case had now settled with a marriage agreement, and were caring for their baby together. A few days later they would meet in court to testify in a criminal case that Ratna’s family brought against Pranata. In the hospital, Ratna and Pranata were sitting side by side, holding hands together and teasing each other, like young lovers. This episode shows the complexities of pregnancy outside of marriage, the interrelationship between state and *adat* marriage system, and the practice of prosecuting pre-marital sexual intercourse involving a minor in Bali. Like Ratna’s case, pregnancy and birth outside of marriage can introduce two potential problems in a family, arising from two different legal systems: 1) the absence of a place for the baby in the *adat* community, and 2) the lack of a birth certificate for the baby. In such cases, child marriage becomes a solution to both of these problems. And, state agents such as marriage registrars, judges and prosecutors facilitate this solution by navigating between the state and *adat* law system. To understand the interrelationship between these two legal systems in this process, this article analyzes two types of legal cases: marriage dispensation; and prosecution for pre-marital sexual intercourse involving a minor (hereafter “sex crime”).

### ***Legal pluralism and human rights: theoretical question***

What exactly is state law and what is *adat* law? In this article, I discuss each legal system as a tool for social engineering, designed to achieve a set of ideas about justice, rights, and process (Merry 2014, 120). More specifically, I suggest the state law system is an institution of liberal legalism and the *adat* law system is an institution of locality. This approach allows me to examine the tension between the different ideas emanating from and within these two institutions, and how these ideas interact and transform in the application of both legal systems. I pay particular attention to the

role of judges, who remain on the front lines of the interaction and tension between liberal legalism and locality.

Dossa (1999, 76, 79) describes liberal legalism as a “rational machine” under the name of judicial formalism, recognizing only the individual interests while scanting the ideals of communal harmony and collective good. Nader (1991) indicated this contradiction in her conceptualization of “harmony ideology” having roots in colonialism. In Weber’s view, too, modern law was driven by logic and rational calculation (Calavita 2010, 12). Customary law, on the other hand, “is local knowledge; local not just as to place, time, class, and variety of issue, but as to accent ... vernacular characterizations of what happens connected to vernacular imaginings of what can” (Geertz 1985, 215).

Engel (2016), who studied injury cases in Thailand, argues that state tort law has liberal legalism at its core, and is therefore not compatible with how traditional Thai communities work, which are based on the “relational self” shaped by belonging to traditional kin and community (Merry 2009, 404). This conceptualization of the relational self explains why, in studying Southeast Asian societies, individualistic views of rights and autonomy that are rooted in the European tradition of liberal legalism often fail to make sense of the data from the grounded research in the region (Chua and Engel 2015, 213). These studies suggest a possible blind spot in human rights mechanisms: the protection of individual rights does not necessarily lead to the protection of the rights of the relational self. These two different kinds of rights co-exist, and are at times in conflict.

The tension between individual rights-based liberal legalism and community-based customary law is illuminated in the debate over legal pluralism and human rights. From one perspective, the existence of legal pluralism is in tension with the universalism of human rights: a legally pluralistic society, containing a variety of fragmented sources of legal orders, may conflict with the universal standards prescribed by human rights norms (Sheppard 2013, 142). International bodies do acknowledge such challenges: the Committee on the Elimination of Discrimination against Women (2004) has stated that the co-existence of multiple legal orders, in which customary and religious legal orders prevail over the state legal order remains a source of great concern for the defense of women’s rights. Regarding child marriage, the report by the international human rights organization Equality Now (2014) recommends that states “conduct a full review of customary and religious laws and traditional practices and evaluate how these laws and practices affect girls and women and perpetuate child marriage” (Equality Now 2014, 16). While these international institutions tend to express their skepticism towards customary laws, some scholars argue that human rights standards may spread more effectively and with greater legitimacy if they are adapted to local cultural contexts and customary laws (Sheppard, 2010 An-Na’im 1992; Macdonald 2013; Merry 1997).

The question remains as to how we should address legal pluralism in the realization of human rights. Unifying multiple legal orders through the complete abolition of informal justice systems has proven to be unrealistic and perhaps undesirable: customary law, or informal justice systems, are prevalent and resilient (See for instance: Ubink 2011; Kerrigan et al. 2012). To explore an alternative and the theoretical question, this article looks to empirical evidence: a case study of child marriage in

Indonesia. Child marriage, defined as marriage below the age of 18, today is considered a human rights violation (Equality Now 2014), and its elimination forms the basis of one of the Sustainable Development Goals (SDG 5.3). Is legal pluralism an obstacle to achieving this goal? The analysis of legal cases involving child marriage practices offers a basis to investigate how pluralistic legal systems affect the implementation and enforcement of human rights law.

### ***Legal pluralism and child marriage in Indonesia: empirical question***

An extensive volume of existing work on the pluralistic nature of the Indonesian legal system discusses the friction that liberal values cause among other values. Lubis (1999, 171) explains that liberalism in the Indonesian state legal system – the *rechtsstaat* (the state based on law) – is a commitment in principle, by government officials to modern Indonesia. The *rechtsstaat* includes a guarantee of human rights protection, an independent and impartial judiciary, and strict adherence to the principle of legality (Lubis 1999, 172). Fitzpatrick (2008, 502) explains Indonesian criminal law as a Western-style legal system, which is centralized, inflexible, hierarchical and secular. The Marriage Law 1974 specifically commits, in principle, to liberal values such as establishing legal equality of Indonesian women (Butt 2008, 282), although these values also have been compromised (Grijns and Horii 2018, 5). Liberal ideals of *reformasi* (the period of political, legal, economic and social reforms which followed president Suharto’s resignation in 1998) has had influences in Islamic family law, too (Cammack, Bedner, and van Huis 2015). Law No.23 of 2002 on Child Protection (hereafter “Child Protection Law”) is a typical example of aspired liberalism in the state legal system, basing its basic rights principles on the 1945 Constitution and the Convention on the Rights of the Child.<sup>1</sup>

Despite these liberal principles, and influential Islamic values in state law-making (Grijns and Horii 2018), collectivism is also politically strong and practically persistent in Indonesian ideology (Reeve 1987; Bourchier 2015). Such collectivist ideology is often expressed as “harmony”: the importance of the “spirit of harmony as a prevailing social value” (Lubis 1999, 179) or “cultural obsession for harmony” (Fitzpatrick 2008, 503), which is at times in tension with the principle of legality. Consequently, community interests outweigh those of the individual (Hooker 1978, 55), and the application of the principle of *rechtsstaat* remains doubtful because of prevailing notions of *asas kekeluargaan* (communal principles) and harmony (Lubis 1999, 183–184). This ideology is reflected in Indonesian state law, too. The 1945 Constitution is an example of the tension and compromise between different ideologies. It sets out a commitment to *rechtsstaat* principles, yet at the same time provides for extreme flexibility enabling enough space for collective ideologies to be reflected in implementation, for instance in its loose-phrasing of the original text (Bourchier 2008, 100). This somewhat forceful integration of two ideologies explains the minimal influence of Indonesia’s state law in practice, described as “law without law” (Katz and Katz 1975), or having only some normative influence as a principle (Fitzpatrick 2008, 512). The most recent constitutional amendments of 1999–2002 reflect the

transition of Indonesian legal ideologies from integralism to liberalism, at least in principle (Bedner 2017).

Legal pluralism in Indonesian family law has been explored through various issues: divorce (Van Huis 2015; O'Shaughnessy 2009), polygamy and mixed marriage (Butt 2008), and inheritance (Von Benda-Beckmann 1984; Bowen 2003). In comparison, child marriage in Indonesia, in relation to Indonesia's pluralistic legal system, remains an underexplored area of study. Child marriage in Indonesia has attracted attention as both a social and scholarly topic, generating rich anthropological accounts on the issue. Grijns' study in a West Java village has developed a typology of underage marriage (Grijns et al. 2016), showing several ways in which people deal with underage marriage outside of the state legal scheme. This has helped in understanding the interplay between the state system and local norms (Grijns and Horii 2018). Yet studies about marriage dispensations have been the subject of only a few reports (Eddyono et al. 2016) and scholarly contribution is still limited. Furthermore, none of the discourse has connected sex crimes to the study of child marriage, even though both primarily result from adolescents' sexual relations outside of marriage. This article engages in a combined analysis of marriage dispensation cases and sex crime cases, to gain a nuanced and accurate understanding of the issue of child marriage in relation to sexual morality.

### **Methodology**

In the empirical exploration of this article, I focus on understanding how state institutions and authorities try to manage their rules and norms in practice, when confronted with cases involving premarital sexual intercourse and teenage pregnancy. While Bali today is a multicultural area with tourists and migrants, I mainly focus on the practice of Balinese Hindus, in order to identify the role of their *adat* law. I investigated the cases at *Pengadilan Negeri* (hereafter PN, civil court), which adjudicates marriage-related legal issues among non-Muslims and criminal cases for all citizens. Bowen (1998, 385) observed that, as judges make legal arguments by justifying the legal rule by referring to social norms, courts become a place where judges try to negotiate compromise between state law, religious law and social norms. In this respect, courts are a particularly interesting place to observe the tension between *adat*/religious norms and state rules. I collected about 30 court decisions, issued between 2013 and 2016 from three different civil courts, namely PN Bangli, Semarang, and Denpasar (Appendices 2 and 3). I analyzed these court decisions in light of interviews conducted with judges and clerks who worked at the three courthouses.

Another source relied upon in the analysis were interviews conducted with various informants, including 1) judges, 2) marriage registrars at Civil Marriage Registration Office (hereafter KCS, *Kantor Catatan Sipil*), 3) *adat* law scholars, and 4) children and families involved in legal cases, including Ratna, Pranata and their family members. In addition, I relied partly on observation and remarks at focus group discussions with local activists and Balinese teenagers. Appendix 1 provides a list of the

interviews and focus group discussions. All names of informants are referred to using a pseudonym.

Throughout my fieldwork in Bali, I was working with LBH Apik Bali (*Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia untuk Keadilan Bali*, Legal Aid Association of Indonesian Women for Justice), a local branch of a national NGO that provides legal assistance for local populations such as women and children from low-income families. Working with LBH Apik Bali provided not only access to key interviewees such as children, local *adat* leaders and judges, but also opportunities to do participant observation on how legal awareness programs were they conduct legal awareness programs, and how they use various legal systems to strategize their objectives for the protection of clients. I also worked with local research assistants, integrating their views on the data collected. I held regular meetings with them, where I encouraged them to take initiative and freely express their opinions on the approach, methods and interpretations of the data. Most of the time I went to interviews with one of them, although sometimes I went with more than one, and at other times I went alone. In the interviews, they helped me with language (especially when informants spoke in Balinese), deciphering the social codes and interpreting what had been said. Working with the local organization and the assistants gave me opportunities to consider locally-sensitive solutions to the issue, instead of blindly imposing a foreign standard that could be irrelevant to the local situation.

Following from this introduction, the next section discusses marriage law – including the Marriage Law 1974 and the Balinese *adat* law on marriage. An analysis of the civil marriage registration practice and marriage dispensation cases demonstrates how state law has been used in court practices to accommodate the demands from *adat* law. The subsequent section then investigates sex crime cases – punishing boys for the act of sexual intercourse outside of marriage. Focusing on the use of the Child Protection Law, the two sections above provide an analysis of civil and criminal cases, examining the roles that state legal agents play in coping with pregnancy outside of marriage. Based on the analysis and empirical findings, the Conclusion returns to the theoretical question of what legal pluralism means for the realization of human rights.

### **Marriage law: minimum age for marriage, marriage registration and dispensation**

This section explores state marriage registration in relation to *adat* marriage, as well as marriage dispensation. Marriage dispensation is a system of exception stipulated under the Marriage Law 1974 (Article 7), in which people can obtain a legalization of marriage from the state under the marriageable age (16 for girls and 19 for boys). In this section, I first explain the underlying social norms surrounding marriage and pregnancy, and then explore the relationship and interaction between civil marriage and *adat* marriage in Bali. Next, I investigate cases of marriage dispensation to understand how judges justify and compromise when dealing with young people's pregnancy outside of marriage.

### ***Social norms and adat law about marriage and pregnancy***

In Bali, marrying young is generally not a preferred option: today's ideal age for marriage in both men and women is their early 20s.<sup>2</sup> Most young people prefer to complete their education (at least high school, SMA, until the age of 18) and start working before they marry. In a focus group discussion with teenage girls in Denpasar area, one participant said, "I want to continue school, rather than to marry, because nowadays it is difficult to find a job. People who only have a bachelor's degree find it difficult to become employed" (FGD 1). The *Niti Sastra* text, a summary of ancient wisdom and a standard of courtesy and good manners (Gonda 1976, 244), also writes "*semara ruang puluhing yusa*," meaning that the ideal age for falling in love is 20 years old (Interview C).

However, in the case of pregnancy, people "have to" marry before this ideal age. Both the girl who falls pregnant and her boyfriend are "expected to" marry. This expectation relates to the Balinese patrilineal kinship system: in Bali, a marriage regulates the transfer of women from one lineage to another (Jennaway 2002, 60), and babies are supposed to belong to the father's lineage. Therefore, marriage under the Balinese *adat* system is a practical necessity to identify the father of the babies (Jennaway 2002, 69). All those lineages and marriages are organized around the Balinese *adat* community, called *banjar*, which is present in every part of Bali regardless of rural/urban divisions. The decision to marry, especially in the case of unwanted teenage pregnancy, is in the hands of the teenagers' parents, and of the *banjar* to which the families belong. In one case, a marriage decision between a pregnant girl and her boyfriend was the result of a mediation process with the head of their *banjar*. The youngsters themselves did not want to marry, however their parents and the head decided otherwise.

To deviate from the *adat* rules is not easy. When a baby is born outside of wedlock, the family is expected to perform a sort of ceremony in the *adat* community to which they belong. This performance can be a combination of different ceremonies – *mecaru* (a simpler form is called *prascita*), which is to purify the "polluted" (*kotor*, *cuntake*) environment, and *meperas*, which is to adopt the baby born out of wedlock. These ceremonies are at times costly, and sometimes involve a number of people at the community, so they work both as economic and social sanctions.<sup>3</sup> The price of *mecaru* in a village can be up until 13 million rupiah (770 EUR), according to an applicant for marriage dispensation I interviewed. He added: "for me who works as a sculpture artisan, 13 million rupiah is a huge amount of money" (Interview D).

The logic behind these rituals is that the issue of pollution (*cuntake*) refers to the sense of communality that is built around genealogy or ancestry. Warren (1993, 4) explains that *adat* law in Bali involves *tata krama* (local practice), *sima* (rules and norms) and *dresta* (*adat*/custom) as "a field of meanings covering ritual obligation, social institution, legal regulation and ancestral evocation." Accordingly, *adat* law governs not only the bodily aspect of its *adat* members, but also the supernatural aspects of the territory. *Adat* law defines the boundary between the sacred and the profane and maintains the positive spiritual influences within the community, so that members can live in harmony among each other and with the environment. For example, when a murder occurs in an *adat* territory, its implication is not only that someone has died and the perpetrator shall be sanctioned for his action, but also that

the positive aura of the village has been “polluted” by such killing. This may bring a bad spirit to the territory and may influence others to do bad things. Similarly, birth outside of marriage is believed to bring negative spirituality not only to the family, but also to the community as a whole. Because present-day human beings are believed to be reincarnated ancestors in their patrilineal family, the question of fatherhood is not only social but also cosmological and existential.

Heavy sanctions are imposed on families who fail to perform *mecaru*. The whole family could be denied access to the local cemetery and temples, or ostracized by the entire village community (Ramstedt 2013, 121). A lawyer at KPPAD (*Komisi Pemberdayaan Perempuan dan Anak Daerah*, Regional Commission for Development of Women and Children) explained that, for the Balinese, *adat* law is of greater significance than state law, as *adat* is part of Balinese life as members of *banjar* (customary hamlet) and *desa adat* (customary village) and its sanctions are imposed collectively to the member through *sangkepan* or *paruman* (customary assembly of the *banjar* members) (Interview E).

One of the case studies that I followed, the case of Nina, demonstrates the difficulties that arise in not adhering to the *adat* rules on marriage. In her case, she gave birth outside of wedlock, but was able to obtain an *akta tunggal*, which is a kind of certificate of birth without the name of the father issued by the state. With this birth certificate, her child would be able to go to school, although it might result in some stigma. But her situation was problematic because, due the *adat* system, her baby boy could not belong to any family temple, and as such there was no place to pray or to perform any of the *adat* ceremonies for him. Her mother said:

I am afraid of the baby’s future - if Nina does not marry, when later her baby becomes an adult, he must have an ancestral temple and ask permission from his father’s family for anything that happens. And it is not possible for him to enter into Nina’s family temple according to religion and *adat*.

In Ratna’s case too, hurdles arising from the *adat* system were the main motivation for them to accept the apology and marriage proposal from Pranata’s family.

Previous research on Bali has recorded a diversity of *adat* marriage practices and rules. Korn (1932, 469–516) documented several types of *adat* marriage in Bali, including *ontmoetingshuwelijk* (arranged marriage), *schenkuwelijk* (donation marriage<sup>4</sup>), *vluchthuwelijk* (marriage by eloping), *schaakhuwelijk* (marriage by kidnap), and *dienhuwelijk* (serving marriage<sup>5</sup>). Boon (1977) has categorized Balinese *adat* marriage into three types: marriage by (mock) capture, arranged marriage for alliance, and endogamy. Until today, *adat* law is diverse and differs from one customary village to another. *Adat* law at the village level in Bali is codified as *awig-awig*, which includes provisions about *adat* marriage,<sup>6</sup> and disputes within *adat* domain are resolved through an assembly at the *banjar* level (Interview E).

The philosophy at the foundation of the *adat* system is that every family in a *banjar* will need other families in the community, so they should maintain a good relationship with each other. *Adat* in Bali has “always been embodied in what is essentially community praxis” (Warren 1993, 296). Rituals are conducted to guarantee the continuation of social order and as such, the infringement of any *adat* rules is believed to endanger the well-being of the collective rather than the individual

(Ramstedt 2014a, 62). Furthermore, according to Ramstedt, the Balinese *adat* law constitutes “feeling rules” that require cognitive bodily emotion work to release what the social environment deems to be inappropriate feelings (Ramstedt 2014b). To be more specific, a “calm” feeling in oneself indicates a world – one’s world – in balance (Wikan 1990, 272).

### ***Relationship between adat and state law***

Although *adat* law is central to people’s lives in Bali, it does not exist in a vacuum. It is closely interwoven with state law. For instance, as part of a recent decentralizing process, the Indonesian government enacted a series of laws on regional governance, which provided the Balinese provincial parliament with new legislative autonomy. The provincial parliament accordingly issued regulations that codified Balinese *adat* law, so that it now is the major source of law at the village level (Ramstedt 2014a, 61). These changes at the same time are indicative of an increased tension between state law and *adat* law, as norms of the state legal system are increasingly being challenged by lower level legislation (Ramstedt 2014a, 61).

When it comes to marriage, *adat* marriage and civil marriage registration have different procedures, consequences, motivations and meanings. While *adat* marriage is to be accepted by the community,<sup>7</sup> people engage in civil marriage registration in order to have official documentation, mainly marriage certificates and birth certificates. While *adat* marriage is a prerequisite for civil marriage registration, civil marriage registration is a separate step to be completed after *adat* marriage. In this sense, they function as two different systems, with the civil marriage registrars emphasizing that they do not interfere with the *adat* marriage rules and focus only on executing state regulations. As a civil registrar explained:

Marriage based on religious ceremony alone is not enough and we regard this as not yet being married in our database. If you want to have religious marriage, well, please go ahead, but these marriages will be blocked (will not be valid) at the Civil Registration Office. (Silahkan menikah agama, tapi tutup di KCS) (Interview F).

Judges also seem to recognise the clear division of function between *adat* law and the state law system. A judge whom I interviewed explained that he does not use *adat* law in court decisions. He only uses *adat* law to reduce the penalty – for the “balancing (*mempertimbangkan*).” By using *adat* law, he does not invoke written *adat* law such as *awig-awig*, which are different in each area, making it difficult to apply in courts. Instead, what he means by “using *adat* law” is taking the “*adat* law process” into consideration – reconciliation or negotiation between families, sometimes with *kelian adat* (a local leader) too (Interview G).

Regarding the use of *adat* law in criminal cases, the judge said that in principle, state law is above *adat* law, however in practice *adat* law is critical for balancing, and state law is actually resorted to as a secondary solution where *adat* law cannot resolve a dispute among people (Interview G). But, in civil cases, judges claim that *adat* law is on par with state law, and they tend to “mix” (*campur*) or use these two legal systems interchangeably depending on the case (Interview H).

Judges, marriage registrars and *adat* law professors accept *adat* marriage as “*sah*” (valid) in Balinese society. Judges are authorized to use *adat* law,<sup>8</sup> although not all judges use it (Interview J). A judge who comes from another province told me that when she needs to apply *adat* law in her judgement, she asks her Balinese colleagues for advice (Interview H). A good judgement, according to judges, is one that does not neglect social aspects and *adat* law while complying to state law and due procedures (Interview H).

A professor of *adat* law in Bali refers to Article 1 (2) of the Marriage Law that stipulates the validity of a marriage when it is conducted based on the couple’s law of religion and faith, and explains that in Bali such law of religion is found in *adat* law, which derives its rules and principles from the *hukum asli* (living law) and Hindu law. There is no difference between *adat* and Hindu law in Bali: they are deeply intertwined and thus indistinguishable. He says that due to the inherently private nature of a marriage, it is difficult for the state to control it in practice, even when it is regulated by state law. “State law cannot intervene in culture or *adat*. Laws need to be in harmony with culture and social norms and they come from society” (Interview C).

### **Civil marriage registration**

Interaction between *adat* law and state law is observed in civil marriage registration practices. Civil marriage registration is becoming increasingly important for people’s lives due to educational opportunities, and because civil marriage registration is a condition for obtaining a birth certificate, which is needed for school attendance. There are two types of birth certificates in the Indonesian civil system: “normal” birth certificate (*akta kelahiran*) with the name of two parents and “deviant” single birth certificate (*akta tunggal*) with only the mother’s name.<sup>9</sup> What enables a child to obtain the normal birth certificate is his or her parents’ civil marriage registration before birth.

To obtain the ‘normal’ birth certificate, what matters is the date of the *adat* marriage ceremony, as the civil marriage at KCS is registered retrospectively at the date of the *adat* marriage ceremony. A civil marriage registrar explains:

To have the father’s name on a birth certificate, a child needs to be born after the *adat* marriage ceremony. Otherwise, the father can be anybody and we can’t know. Even if the baby is born only one day before the *adat* marriage date, the birth certificate cannot be issued, but only an *akta tunggal* (Interview F).

A child with *akta tunggal* is considered to be an “illegitimate child” (*anak luar kawin*). One of the difficulties for children with *akta tunggal* is the absence of inheritance rights. As Bali is a patrilineal society, no possibility for inheritance is available for those who do not have fathers’ name on their birth certificate. Another difficulty is the social stigma attached to unmarried mothers and *akta tunggal*. A judge explained the consequences of having *akta tunggal*:

If the marriage is not recorded in KCS, the baby cannot have a status as “anak bapak” (father’s child), he/she will still be “anak ibu” (single parent). Please do not give another burden to the baby just because his parents were being irresponsible. This baby must have a birth certificate with both names of his parents so that in the future he can go to school without problem or minimize the possibility to be bullied.

The requirements to obtain *akta tunggal* are only the mother's birth certificate, and her ID card (KTP) or family card (*kartu keluarga*, a document that contains information such as residency and family members). As the KTP is available only for those who are above 17 years old, if the mother is under 17 years old, she has to wait until she reaches that age (Interview F).

The functions and roles of these certificates explain why people try to obtain civil marriage registration even though *adat* marriage is sufficient to avoid sanctions of pregnancy outside of marriage. In the case of a marriage below the legal marriageable age, there are two ways to legally register a marriage: age manipulation and marriage dispensation. Such manipulation of age is called *katrol usia* (literal translation being "pulley of age"). In one of my case studies, when Novi and Angga married according to *adat*, Novi (a girl) was 17 years old and Angga (a boy) 15. A few months after their *adat* marriage ceremony, Angga's father asked the head of his community to issue Angga's KTP with his age 19 (4 years older than his actual age). "If I am not mistaken, we paid 300.000 Rp (18 EUR) to issue the marriage certificate," said Novi, but it seemed that this was all arranged by Angga's father (Interview I).

In their case, they married because Novi's family from North Bali put pressure on both of them when the family found out that they were living together in Denpasar. "My family wanted me to get married because their friends and families knew about our relationship. This was to avoid embarrassment (*malu*) in the village," said Novi. To serve this goal of avoiding the feeling of *malu*, it is enough to marry according to *adat*. The young bride and groom did not even know the minimum age for marriage under state law until his father told them. But, for the father it was important to register the marriage for obtaining a birth certificate, which will be needed for their children to go to school.

Given that age manipulation operates outside of the state legal system, marriage dispensation is the only legal way to obtain civil marriage registration in the case of underage marriages. Judges usually grant dispensation, as they also recognize the necessity of these certificates. One of the judges added:

It is also because people are not comfortable and afraid of the stigma attached to pregnancy outside of marriage. There is an idea that if a couple already lives together without being married, the area becomes dirty (*cuntake*). So as a judge, I consider and balance all the factors (*mempertimbangkan*)" (Interview J).

Another judge explained that the reason to apply for marriage dispensation is often pregnancy outside of marriage and mutual love relationships (*suka sama suka*). She grants dispensation to ensure conformity with social norms (*norma sosial*) and laws from the community (*hukum dari masyarakat*). She said:

I have to think about the effect on and pressure from society – they will keep thinking, "who is the husband, who is the father?," unless the pregnant girl gets married. So, there is need to clarify the status. If the father's status is not clear, it is painful (*sakit*) for the baby when he/she grows up. So I feel pity (*kasihan*) for such situations (Interview H).

### **Marriage dispensation cases**

As marriage dispensation legally allows marriage below the minimum age for marriage, it can be seen as a legal mechanism that enables child marriage – meaning, a

hindrance to human rights progress. But, is it really so? To understand the motivations underlying marriage dispensation, I analysed eight cases of marriage dispensation from two District Courts (*PN Bangli* and *PN Semarapura*), decided between 2016 and 2017 (see Appendix 2). Under the 1974 Marriage Law, there are no specific conditions stipulated for judges to grant dispensation. The applicants were always parent(s) of either candidate, wife or husband, and sometimes both. The couples were all young adolescents (14–20 years old), and, perhaps surprisingly, in 75% of cases the underage party was a boy (husband candidate). In the other two cases, the underage party were girls as young as 14 years old. In three out of eight cases (Case A, B, C), the girl was pregnant at the time of the hearing, and in the other five cases (Case D, E, F, G, H) the couple had already had the child, after their *adat* marriage which had been conducted two to five years prior to the hearings. In the remaining five cases, the couple conducted the *adat* marriage following the pregnancy.

In principle, a couple must obtain marriage dispensation before conducting an *adat* wedding (Interview H). However, all of the cases were brought before the courts after an *adat* wedding had been conducted. One applicant interviewed, who was the father of the bride-candidate in a dispensation case, explained the urgency for the *adat* wedding: “We needed to hurry because there are not many ‘good days’ (*hari baik*) – and we were afraid that the baby would be born before the *adat* marriage” (Interview D). In Bali, *adat* marriages must be planned on auspicious days called “*hari baik*,” which can make the planning of such a wedding a complicated and pressing issue.

According to a civil marriage registrar, marriage dispensation has been increasingly difficult to grant, as judges, and courts do not want to be seen as legalizing underage marriages (Interview F). Indeed, some judges sympathize with the liberal values and clarify their point that underage marriages are “strongly discouraged,” as “they risk reproductive health of women who are unprepared and still psychologically unstable.” Judges therefore emphasize that “it should not be too easy to grant dispensations to underage marriages if there are no logical reasons for the children’s interest” (Case D, F, G).

The court decisions also explicitly denounce youngsters’ sexual relationships. The court decisions often use phrases such as “the relationship over the limit (*hubungan tersebut melewati batas*)” (Case C), “a such free relationship (*pergaulannya yang begitu bebas*)” (Case D, F, G), “a relationship as if husband and wife (*hubungan layaknya suami istri*)” (Case E), to describe the relationship between the couples. Such a sexual relationship is claimed to be caused by “their social freedom and lack of supervision from parents” (Case D, F, G).

In spite of this moral condemnation for adolescents’ relationships and liberal ideals to prevent child marriage, dispensation was granted in all of the eight cases. The court decisions revealed several ways that judges justify their decisions. First, they invoke the Child Protection Law:

Their marriage (pregnancy) was caused by their social freedom and lack of supervision from parents, so the future of the new-born baby requires a complete family consisting of father and mother to provide care and devoted love for the baby’s growth. Child protection aims to guarantee the fulfilment of children’s rights in order to live, grow, develop and participate optimally in accordance with human dignity and values, and to

be protected from violence and discrimination (Article 3 of Law No.23 of 2002 about Child Protection) (Case D, F, G).

Second, judges pointed out the negative consequences of not granting dispensation. “If the marriage dispensation is not granted, there will be unfavourable negative impact for both parties, so the judge believes that the best legal solution is to provide marriage dispensation” (Case B). This vague use of “negative impact” resonates with the use of the Islamic concept “*kemaslahatan*” in the marriage dispensation cases in West Java (Horii 2015).

Judges also buttressed their reasoning by showing their decision did not conflict with state law. Case B writes: “Granting marriage dispensation has been reasoned and is not against state law.” Case A emphasizes that the decision is not in contradiction with Article 7(1) of the Marriage Law, as “the minimum age limit in the provision means that married persons are expected to have maturity, mental maturity and adequate physical strength.” Another judge used Article 2(1) of the Marriage Law, which recognizes the validity of a marriage that took place in accordance with the religious laws of the parties, stating: “Their marriage was a lawful marriage carried out by a Hindu religion so it has fulfilled the provision” (Case D, F, G).

Three out of eight cases mentioned *adat*/religious law. Some cases discussed the concept of *cuntake/leteh*: “As the girl is pregnant, if not immediately married, there will be the situation of *cuntake/leteh* according to *adat* and religion” (Case A, B). They also referred to underage marriage as not prohibited under *adat* law: “*Adat* law does not set a certain age limitation to perform marriage” (Case A), “The decision also does not conflict with the rules and legislation in force and *adat* law in the applicants’ residence” (Case A), and “There was no barrier to conduct the marriage either in terms of kinship and *adat* relationships, no prohibition to conduct marriage according to Balinese *Adat* Law and Hinduism” (Case B). Case H lists the elements that validate a Hindu marriage,<sup>10</sup> to demonstrate that the underage marriage in this case is religiously valid.

The relational aspect of marriage is emphasized in association with *adat* law to justify marriage of a child. Case A reads:

*Adat* law allows the marriage of children to be executed. This is because in the *adat* law, marriage is not merely the union of both individuals, but also the union of two relatives (*keluarga kerabat*). An underage marriage or a marriage of children is not a problem in *adat* law because the wife and husband will be guided by their family, so *adat* law does not prohibit a marriage of children.

This communal nature of *adat* marriage was also explained by a professor of *adat* law in Bali:

The structure of *adat* law starts from the family and goes up to the *banjar* (hamlet) and the *desa* (village) levels. Each part of this structure has an equal position. (...) This is why in Bali, marriage is not only marriage among the couple, but also among their extended family, *banjar* and village, as a marriage involves a number of parties representing these structures and the witnesses at the wedding ceremony (Interview C).

The analysis of dispensation cases above demonstrates that judges use *both* state and *adat* law in order to justify and strengthen the legal grounds for their decision to grant marriage dispensation to underage couples. They emphasize both the practical

and moral importance for marriage in the case of pregnancy. Practical importance relates to the protection of citizenship (participation in the welfare state and education system through civil marriage registration), while moral importance relates to the moral equilibrium of the community.

To serve these moral and practical goals, the Child Protection Law is used in a counter-intuitive way. On the one hand, the law is inspired by modern values and liberal principles from the UN Convention on the Rights of the Child, particularly in Article 26(1), which stipulates parents' obligation to prevent child marriages. On the other hand, in practice it is used to legalize underage marriages, protecting babies from societal harm. This reasoning underscores the point that babies are also children, not only the "child brides" that international human rights advocacy tends to focus on. Decisions to allow underage marriage are considered to be in conformity with state law, as marriage is the union of two families according to the Balinese *adat* law.

### **Criminal law: sex crimes**

Apart from marriage dispensation, another way that judges deal with young people's pregnancy outside of marriage is to treat them as 'sex crimes' involving minors. As the previous section has shown, pregnancy outside of marriage is the main motivation for marriage dispensation, and as this section will demonstrate, sex crimes are sometimes used in cases where marriage dispensation fails to resolve such incidents of pregnancy. These two types of cases are, therefore, closely interlinked.

Under the current Indonesian Penal Code and the Child Protection Law, it is a criminal offense to "play tricks, tell a series of lies, or persuade" children under age 18 to have sexual intercourse.<sup>11</sup> Pompe's (1994) study on extra-marital sex crime cases in Indonesia is illuminating. He observed that in the 1990s, "the judiciary was drawing *adat* more and more into the sphere of state criminal law" (Pompe 1994, 112). For instance, the Supreme Court based several of its judgments in Balinese cases on an old Balinese code of law, which specifies that if a man induces a woman to have sexual intercourse with false promises of marriage, he is liable to punishment (Pompe 1994, 116). He concluded that "*adat* is the instrument, the legitimation, and the pretext in the effectuation" of a kind of moral reform by the judiciary "to fight the social reality of extra-marital sexual relations, and, more in particular, the practice of men inducing women by means of a false promise of marriage to have sexual intercourse with them" (Pompe 1994, 118).

Today, the media reports sex crime cases sensationally, and people in Bali are well aware that premarital sexual intercourse by minors could lead to a criminal offense. The fear of prosecution and imprisonment has become an incentive for the boy and his family to agree on marrying the girl. The girls' families also use the state legal system as a way to seek revenge, disapprove of their daughters' relationship, or negotiate with the boy's family.

Recalling Ratna's case, her family reported the case to the police when her ex-boyfriend and his family were not willing to marry her. This reporting enabled the family to push for negotiation. In other cases, however, girls' families report the incident even when the boy is willing to marry. A judge explained:

It is always parents of the girl who bring such cases to the police. Parents who do not agree to marry their daughters. Even though the boy (defendant)'s family often offer to marry the girl. But girls' family members are angry at the situation of their daughter's pregnancy, and refuse the offer, as they want their daughters to continue school and start working (Interview K).

For this analysis, I collected seven cases of sex crimes relating to sexual intercourse between a boy (16–18 years old) and a girl (13–18 years old), judged between 2013 and 2016 in the District Court Denpasar (see Appendix 3). In almost all cases (six out of seven), the boy (the defendant) and the girl (the victim) were in a romantic relationship (*pacaran*).

The primary source of state law used in these cases was the Child Protection Law No.23 of 2002, sometimes accompanied by some provisions from the Penal Code (KUHP). Article 82 of the Child Protection Law states:

1. *Everyone who deliberately commits violence or threats for violence, forcing a child to commit sexual intercourse with him or with others, is subject to maximum penalty of 15 (fifteen) years of imprisonment and 3 (three) years at most and fine of Rp. 300.000.000 (three hundreds millions) at most and Rp. 60.000.000 (sixty) million at least.*
2. *Provision of crimes as meant in verse (1) also applies for every man who deliberately plays tricks, tells a series of lies, or persuades a child to commit sexual intercourse with him or others.*

Although the Child Protection Law does not specify the gender of those who commit the act (“Everyone who deliberately commits (...)” in Article 82(1)), in the cases analyzed, it was always boys who was prosecuted, never girls – including cases where the girl was older than the boy involved, such as Ratna and Pranata. A judge explained in the interview:

It is because girls are often younger and often manipulated. For instance, they are in *pacaran*, but the boy promises the girl that he will marry. This is an act of lying, and this can be the ground of the charge. [...] Because there is a feeling. At the beginning they are both happy, but later it is the girl who gets hurt. Girls often say, “I was forced,” or “he said he would marry me.” This is considered as seduction (*bujuk rayu*). [...] If the boy reported to the police for being cheated, the police would ask: what did he lose from the sexual intercourse? Male virginity (*keperjakaan*)? (Interview K).

The first observation from the case analyzed was that, as Pompe (1994) also noted, boys' promise to marry weighed heavily. Making those promises is considered to be “playing tricks, telling a series of lies, or persuading a child to commit sexual intercourse” (Child Protection Law A82(2)). In the court decision of Case D, for instance, it was emphasized that when the victim was hesitant to start sexual intercourse, the defendant convinced her by promising her to “take responsibility” (meaning, to marry) and by saying that he wanted them to have sex as a show of her love towards him. In Case G, the court decision writes: “when the victim refused to have sex because of the fear for pregnancy, the defendant insisted and promised her to take responsibility and marry her if she would become pregnant.”

It is interesting to note that the act of making this promise itself falls under “tricks, lies or persuasion,” and the intention and the outcome appear to not matter. For instance, in Case A, the defendant was sentenced for imprisonment although he clearly was willing to marry the victim after she became pregnant. The court decision noted what the defendant said: “I came inside. I will marry you.” “If you fail to have a miscarriage,<sup>12</sup> we will just marry. I have a house in Buleleng, we just live there.” However, in the end the victim did not want to marry the defendant, as she already had another boyfriend, who she was married to at the time of the hearing.

Why did the judge find him guilty in this case? In the court decision, the judge wrote: “(b)ecause of the pregnancy, the girl had to marry and become a housewife, resulting that she cannot enjoy the childhood period with her peers.” This “damage for the future of the victim” is an important factor in other cases as well. As well, in Cases A, D, E, F and G, this is also mentioned as an aggravating factor.

Here it should be noted that this “damage for the future” is caused not necessarily by pregnancy, but by the act of sexual intercourse itself. Judges place significant weight on the “tainted” reputation of the girl and her family. The court decisions emphasize the shame of losing virginity, which has long-term damage for the future of the girl. These factors are mentioned as a reason for the judgments, especially in cases of mutual love (*suka-sama-suka*), such as Case E. In these cases, judges justify their decisions with societal factors. Case E reads:

Even though the act of intercourse was done on the basis of mutual willingness and there was no compulsion, the action of the defendant had a negative impact on the victim in the midst of her community. The victim’s reputation got tainted, she is scorned by the surrounding community if the victim is not a virgin, resulting in a prolonged shame on both the victim and her extended family. The defendant’s act is not a good example for other children. His act has caused trauma and shame on the victim among her community and her school. His act damaged the future of the victim. His act disturbed the society (*masyarakat*).

In addition to relying on the above-mentioned state laws as the basis for the indictment, in some cases (Case A, B, E), judges also rely on the moral code of society. The court decisions write: “the religious norm that is not to have sexual intercourse outside of husband/wife relationship is violated”; “according to ‘religious norms’ and ‘norms in community’, the act is only for legally (*sah*) married adults”; and “sexual intercourse without *adat* marriage is against ‘norms of decency’ and ‘legal norms’ that damage the reputation of the girl even if it was a case of mutual love.”

Such moral and societal elements are fundamental factors for judges. According to a judge, “It is a matter of two families. If no conflict, no problem” (Interview G). I asked why the defendants in such case can be exempted from the indictment by settlement while it seems that, in principle, this type of criminal charge cannot be withdrawn once it has been reported. Police also turn a blind eye if no one reports the case. The judge explained the answer using what he called “restorative justice”: “That is because it’s about two families, and about community. If they get married, the problem is already over. This is because the society thinks it’s acceptable. It’s about environment and societal connection (*lingkungan*), and community (*masyarakat*)” (Interview G). In Ratna and Pranata’s case, after they agreed on marriage they could no longer withdraw the case, but the judge eventually decided not to

indict Pranata. The judicial outcome would have been different, however, if they had continued to be hostile to each other without the marriage plan that reconciled them.

Mediation (*diversi*) plays an important role in this regard. Judges explained: “if the boy and the girl are still in love, they can try mediation and she would decide that the boy does not need to go to jail, only with probation (*hukuman percobaan*)” (Interview K). “If the boy’s family offers to marry the girl and if the girl’s family also accepts it at mediation, the boy will not be charged” (Interview G).

For judges, a good judgement considers the spiritual balance in the environment: “We have to look at children and their environment. [...] Balancing the feelings of both families is also important. Feeling of justice (*rasa keadilan*) for the community also should be considered, as a judgment needs to be a good example for the society” (Interview K).

The analysis of the court decisions and interviews together indicates that judgments are intended to resolve the feeling of unrest between the families and communities, rather than act as technical judicial decisions: such decisions, according to judges, are to “restore harmony and peace in the community.” In this sense, my findings reveal a slightly different perspective from Pompe’s (1994) account, on how judges choose to handle sex crime cases. While Pompe suggests that judges take a moral approach in using *adat* law to condemn extra-marital sexual relations, my cases show that it is also a pragmatic approach to restore harmony, choosing solutions that maximize the benefits for all parties.

On the other hand, imprisoning boys can damage their future unfairly sacrificing them for the moral equilibrium of the community. This is an undesirable outcome of over-criminalization (Hermawan 2018) that unproportionally affects boys. Also, in the cases of sex crime, like dispensation cases, state laws are used in court practices somewhat differently than how they were designed to be used. While the Child Protection Law is to protect children regardless of gender, and the specific clause about criminalization of sexual intercourse with a minor is made to protect children from sexual violence (particularly pedophilia), in practice, it is being used to penalize boys for having sexual relations with their girlfriends.

## Conclusion

In this article, I presented two types of legal cases: marriage dispensation and ‘sex crime’ cases. These cases illuminated how state agents in Bali navigate state law and *adat* law to address teenage pregnancy outside of marriage. In such “emergencies” where the morality of communities is at stake, families, *adat* authorities and state agents collaborate to find ways to adapt the ‘emergency situations’ into a locally accepted normative framework.

Marriage dispensation, as part of the state law system, is a solution facilitated by judges, reconciling the state system in conformity with local solutions according to *adat*. Judges emphasize both the moral and practical importance of granting dispensation, and relying on a counter-intuitive use of the Child Protection Law to achieve this end. While the law is inspired by modern values and liberal principles, when it is applied together with *adat* law in local court, it serves communitarian values, mainly to maintain social equilibrium by legalizing underage marriages. When marriage does not work as a solution to the emergency, parties sometimes resort to prosecutions for

sex crimes, in order to resolve the unrest of the families and communities involved. This possibility of using prosecution as a last resort, has at times been used to put pressure on boys to marry. These two types of legal cases show how state laws, designed in principle to achieve goals of liberal legalism, are being used by judges to serve goals of collectivism – to maintain harmony and morality in the community.

These empirical findings help to answer the theoretical question: *what does the existence of multiple legal orders mean for the realization of human rights?* Considering that in most of the cases examined, judges allowed child marriages by navigating through different kinds of legal system, the answer might seem that legal pluralism hinders the realization of human rights, in that it did not contribute to the substantive goals of *eliminating child marriage*. However, judges' decisions to maintain or restore harmony also seem to help children (at least girls and babies), their families and their community, by saving them from these “emergency” situations. If Indonesia indeed shares the “harmony ideology,” “a bad compromise is better than a good fight” (Nader 1991, 1), and we should acknowledge that harmony is sometimes realized at a cost to individuals (Nader 1991, 309). Even if this compromise, made for the sake of harmony, stands in the way of human rights, it seems wrong to blame legal pluralism for that, as judges used not only *adat*/religious law, but also state law to achieve that harmony. This means that the legalization of child marriages did not result from legal pluralism. So, could it be that legal pluralism *leads to* the realization of human rights? Whether this holds true or not depends on how one defines the nature of human rights: individual or relational?

In light of liberal values, protection of autonomy and individual rights are well embedded in principle, but out of reach in practice – and may even be irrelevant. As the empirical findings have shown, laws in practice (judges' decisions) in Bali are in favor of social equilibrium, which implies protection of rights of the “relational self.” The difficulties that Ratna's families faced with Ratna remaining as an unmarried mother indicate that compliance with *adat* law is essential for the protection of rights of the relational self – both for Ratna and for her baby. This weight on relational rights also has to do with the communal nature of Indonesian marriage, as other researchers have pointed out (Platt 2017). Although for those who are convinced that child marriage is intrinsically harmful, it might be hard to conceive of the practice as serving a protective function, though there is clearly local rationale of child protection, focusing on consolidating family interests and securing the social place (Boyden, Pankhurst, and Tafere 2012).

Considering people's needs to marry arising both from *adat* law and state law, it is understandable that the best possible solution in cases of teenage pregnancy is to marry. This is the conclusion that all the local activists (e.g. a local legal aid association, government agency for protection of women and children, women's section of a Hindu organization in Bali) agreed upon during the focus group discussion I organized (FGD 2). One suggestion was to make a legal agreement between the families that the children will marry, but will continue their education and live in separate households – precisely what Ratna and Pranata did. This is a solution that secures a desirable future for the children within the existing *adat* framework. *Adat* rules are not static, but rather dynamic and flexible to some extent. Accordingly, another solution is to adapt the *adat* rules; a female member of the Hindu organization (*Peran*

*Wanita Hindu Dharma Indonesia*, WHDI) suggested changing the Balinese *adat* law regarding divorce, so that child brides/grooms will have a way out.

As this article has shown, the communal aspects of marriage, emanating from the moral equilibrium of the community are extremely important for Balinese people; therefore, rights of the relational self must be protected and seen as equally important to modern individual rights. Depending on how one defines the nature of rights, as Chua and Engel say, both state law and customary/traditional law can be empowering and disempowering, liberating and constraining (Chua and Engel 2015, 225). In this sense, it appears to be unhelpful to identify legal pluralism or *adat*/religious law as an obstacle to the realization of human rights. On the contrary, if human rights are to be realized, the role of rights must be realized from the perspectives of the rights-holders themselves; and, *adat* law is an essential tool in that process – both for understanding what rights mean and helping in the acquisition of *their* rights.

## Notes

1. Elucidation of Law No.23 of 2002 on Child Protection.
2. A paralegal told me in an interview that people ideally should finish university education before marrying (so after they reach 21), and that the ideal age for marriage according to Hindu law (*Manawadharwa Sastra*) is also 21 (Interview A). An official from BKKBN, the national family planning institute, state that the ideal age to marry is 23 for women and 25 for men, because “The mortality rate of teenage mothers and their babies is high” (Interview B). In a FDG with a group of teenage girls in Denpasar, most girls expressed their opinion that the ideal age for marriage is 25 for girls and 27 for boys. One of the participants said that it was because “Reproductive organs are not ready below the age of 20” (FGD 1).
3. For instance, Article 80 of *Awig-awig banjar Pekandelan Klod, Lingkungan Pekandelan, Kelurahan Semarang Klod, Kecamatan Klungkung, Kabupaten Klungkung* (translated from Balinese by a local research assistant) writes:
  1. *Village/Hamlet has an authority to impose sanctions upon residents who commit wrongdoings*
  2. *The imposition is carried out by the Adat Village Head or Chief of Hamlet according to the procedures*
  3. *The degree of sanctions is based on the degree of the wrongdoings by taking into account the sense of humanity*
  4. *The forms of sanctions are:*
  5. *Fines (money or goods)*
  6. *Asking for apology*
  7. *Panyangaskaran ceremony*
  8. *Fines or goods derived from sanctions are owned by the Village/Banjar*
4. A type of marriage where wealthy people let their servants marry their daughters, in order to show appreciation of their work and loyalty (Korn 1932, 476).
5. A type of marriage arrangement, where the husband agrees to work for his wife’s father instead of paying the brideprice (Korn 1932, 491).
6. For instance, Article 63 of *Awig-awig banjar Pekandelan Klod, Lingkungan Pekandelan, Kelurahan Semarang Klod, Kecamatan Klungkung, Kabupaten Klungkung* regulate *adat* marriage as follows (translated from Balinese by a local research assistant):
  1. *Marriage is an engagement between a male (purusa) and a female (pradana) based on an agreement to live together on love to pursue happiness sekala niskala (materially and spiritually) through a sekala (physical) and niskala (spiritual) witnessing ceremony*

2. *There are two types of marriage, which are:*
  - a. *Pepadikan (a marriage that is started by a meeting of both male and female's families and those families consent to conduct the marriage)*
  - b. *Ngerorod (a marriage without parent's consent – those who already love each other but for some reasons their families disagree for them to get married)*
3. *The conditions to get married are:*
  - a. *The parties are adult*
  - b. *It should be based on love*
  - c. *It is conducted based on the religious rules*
  - d. *In the case of inter-religious marriage, there should be a letter from the non-Hindu party mentioning that he/she converts to Hindu and has conducted sudi widani (a religious converting ritual)*
4. *Marriage should also be conducted in accordance to the existing [state] laws and regulations*
7. To be legitimate according to *adat* law, the Balinese marriage is conducted to be witnessed by three witnesses (*Tri Upasaksi*), which are:
  1. *Dewa Saksi*, witnessed by God through a religious ritual
  2. *Manusa Saksi*, witnessed by human/people represented by *Bendesa* or *Kelian Adat* or other *adat* officials and families of both parties
  3. *Bhuta Saksi*, witnessed by holy spirit through a religious ritual
8. The Second Amendment to the 1945 Constitution is seen to have acknowledged *adat* law as a legal source (Priambodo 2018), and the Article 27 of Law No.15 of 1970 on the Basic Principles of Judicial Powers states that a judge must dig, follow and understand the values of the living law of the community.
9. UU No.24 2013 tentang Adminitrasi Kependudukan.
10. “Their marriage was conducted according to Hindu and *adat* so it is legal (*sah*). According to the Decisions (*Keputusan-keputusan dan Ketetapan-ketetapan*) of the Parisada Hindu Dharma: the validity of Hindu marriage is determined by the presence of *panyangaskara* with *bhuta* witnesses and witnesses as well as *penyaksi* (witness) from *prajuru adat* (*adat* leader) as elements from *manusa saksi*. This is what is often referred to as *tri upasaksi* in marriage ceremony (*samskara wiwaha*)” (Case H).
11. Currently, there is a debate for legislative change in the Penal Code so that extra- and pre-marital sexual intercourse becomes illegal regardless of the age.
12. As abortion is illegal in Indonesia, people often use “miscarriage” for what the English word “abortion” would mean.

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## ORCID

Hoko Horii  <http://orcid.org/0000-0002-9638-4103>

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### Appendix 1. List of interviews and focus group discussions.

|                      | Date   | Interviewee   |
|----------------------|--|---|
| Interview A          | 10/06/2017   | a paralegal working for LBH Apik  |
| Interview B          | 15/06/2017   | an officer at BKKBN   |
| Interview C          | 25/05/2017   | Professor of adat law   |
| Interview D          | 08/06/2017   | an applicant for marriage dispensation case in District Court Bangli (parents of the children who were to marry)  |
| Interview E          | 10/04/2017   | a lawyer at KPPAD   |
| Interview F          | 20/03/2017, 03/07/2017                                   | a marriage registrar at Civil Marriage Registration Office Denpasar   |
| Interview G          | 16/06/2017   | a judge at District Court Depnasar  |
| Interview H          | 13/07/2017   | a judge at District Court Semarapura  |
| Interview I          | 18/05/2017   | a couple who had civil marriage registration by manipulating their age  |
| Interview J          | 31/05/2017   | a judge at District Court Bangli  |
| Interview K          | 16/06/2017   | a judge at District Court Depnasar  |
| Interviews and chats | Several times during the period of April to August, 2017 | a girl who became pregnant outside of marriage and her parents who reported the case to the police as a sex crime.  |
| FGD 1                | 19/07/2019   | Adolescent girls in a banjar in Depasar   |
| FGD 2                | 07/08/2019   | Local activists (e.g. a local legal aid association, government agency for protection of women and children, women's section of a Hindu organization in Bali) |

Appendix 2. List of marriage dispensation cases.

| Case                    | Region   | Decision | Applicant                    | Wife candidate                                    | Husband candidate                         | Reason   | State Law cited  | Adat/religious Law cited  |
|-------------------------|----------|----------|------------------------------|---|---|--|--|---|
| A 7/Pdt.P/2016/PN/Bli   | Bangli   | granted  | fathers of the candidates    | Brahmana Hindu farmer                             | Sudra 18-years-old Hindu private employee | As the girl is pregnant, if not immediately married, there will be the situation of <i>Cuntake/leleh</i> according to <i>adat</i> and religion.<br><i>Adat</i> law does not set a certain age limitation to perform marriage, and it allows the marriage of children to be executed. This is because in <i>adat</i> law of marriage is not merely the union of both individuals but also the union of two families ( <i>keluarga kerabat</i> ). An underage marriage or a marriage of children is not a problem in <i>adat</i> law because the wife and husband will be guided by their family, so <i>adat</i> law does not prohibit a marriage of children. The minimum age limit provisions in A7(1) means that married persons are expected to have maturity, mental maturity and adequate physical strength. Due to the circumstances of six-month-long pregnancy, it is appropriate to grant marriage dispensation. The decision also does not conflict with the rules and legislation in force and <i>adat</i> law in the applicants' residence. | A6, A7, A47, A50 of Marriage Law 1974<br>A34 A35 of Law No.23 2006 jo Law No.24 2013 about Population Administration | <i>adat</i> law do not set age limit for marriage. In <i>adat</i> law marriage is between two families. |
| B 13/Pdt.P/2016/PN/Bli  | Bangli   | granted  | fathers of the candidates    | Sudra 18-years-old Hindu farmer                   | Sudra 18-years-old Hindu farmer           | As the girl is pregnant, if not immediately married, there will be the situation of <i>Cuntake/leleh/kotor</i> according to <i>adat</i> and religion. After the discussion between the two families, they planned the marriage, and there was no barrier to conduct the marriage either in terms of kinship and <i>adat</i> relationships. There is no prohibition to conduct marriage according to Balinese <i>Adat</i> Law and Hinduism. If the marriage dispensation is not granted there will be unfavorable negative impacts for both parties, so the judge believes the best legal solution is to provide marriage dispensation. Granting marriage dispensation has been reasoned and is not against state law.  | A7 Marriage Law 1974   | There is no prohibition to conduct marriage according to Balinese <i>Adat</i> Law and Hinduism          |
| C 60/Pdt.P/2016/PN/Bli  | Bangli   | granted  | father of the wife candidate | Sudra 14-years-old                                | Sudra 20-years-old                        | They have been in <i>pacaran</i> for 3 month, and the relationship went over the limit ( <i>hubungan tersebut melewati batas</i> ). The wedding is already planned on 28th October. The girl is eight weeks pregnant. The man is ready to be responsible for his action and the marriage must be carried out immediately so that their child has a clear status.   | A7 Marriage Law 1974   |   |
| D 104/Pdt.P/2016/PN Srp | Semarang | granted  | mother of the wife candidate | Sudra 14-years-old at the time of marriage (2013) | Sudra                                     | As a result of a free relationship ( <i>akibat pergaulannya yang begitu bebas</i> ), the girl became pregnant. They already have been married in July 2013, and have a child, without a birth certificate. When they married, the girl was underage, therefore to seek a marriage certificate ( <i>akta perkawinan</i> )   | A2(1) A6 A7 Marriage Law 1974<br>A3 Law No. 23 of  |   |

(continued)



## Appendix 2. Continued.

| Case                   | Region   | Decision | Applicant                        | Wife candidate                                    | Husband candidate                                 | Reason  | State Law cited  | Adat/religious Law cited |
|------------------------|----------|----------|----------------------------------|---|---|---|--|--------------------------|
| E 28/Pdt.P/2016/PN.Srp | Semarang | granted  | mother of the husband candidate  | Sudra 17-years-old at the time of marriage (2014) | Sudra 17-years-old at the time of marriage (2014) | As a result of lack of supervision by the parents, the girl and the boy had a free relationship like husband and wife ( <i>hubungan layaknya suami istri</i> ) and the girl became pregnant. When the baby was born (December 2015) the boy was still underage (under 19), so they need permission from the court to marry now. They were married in October 2014, at that time they were both 17 years old. As they obtained their parents' permission for the marriage, and as their marriage was based on mutual love and no-coercion, the marriage was lawful.  | A2(1) A6 A7 Marriage Law 1974<br>A34(1) Law No.23 2006 about marriage administration of the population | 2002 on Child Protection |
| F 20/Pdt.P/2017/PN Srp | Semarang | granted  | parents of the husband candidate | Sudra 18-years-old at the time of marriage (2012) | Sudra 19-years-old at the time of marriage (2012) | As a result of lack of supervision by the parents, they had a free relationship ( <i>libat pergaulannya yang bebas</i> ), whereby the girl got pregnant. They had <i>adat</i> marriage in July 2012, and had a baby. As underage marriage is strongly discouraged as it risks reproductive health of women who are unprepared and still psychologically unstable, it should not be too easy to grant dispensations to underage marriages if there are no logical reasons for the children's interest. Their marriage (pregnancy) was caused by their social freedom and lack of supervision from parents, so the future of newborn baby requires a complete family consisting of a father and a mother to raise, care and devote love for the baby's growth. Child protection aims to guarantee the fulfillment of children's rights in order to live, grow, develop and participate optimally in accordance with human dignity and values, and to be protected from violence and discrimination. Their marriage was a lawful marriage carried out by a Hindu religion so it has fulfilled the provisions of A2(1) of the Marriage Law. | A2(1) A6 A7 Marriage Law 1974<br>A3 Law No. 23 of 2002 on Child Protection                             | 2002 on Child Protection |

(continued)

Appendix 2. Continued.

| Case                   | Region   | Decision | Applicant                        | Wife candidate   | Husband candidate   | Reason  | State Law cited  | Adat/religious Law cited  |
|------------------------|----------|----------|----------------------------------|--|---|---|--|---|
| G 84/Pdt.P/2017/PN Srp | Semarang | granted  | parents of the husband candidate | Sudra<br>16-years-old at the time of marriage(2015)                          | Sudra<br>16-years-old at the time of marriage(2015)                           | rights in order to live, grow, develop and participate optimally in accordance with human dignity and values, and to be protected from violence and discrimination. Their marriage was a lawful marriage carried out by a Hindu religion so it has fulfilled the provisions of A2(1) of the Marriage Law.<br>As a result of lack of supervision by the parents, they had a free relationship ( <i>alibat pergaulannya yang bebas</i> ), whereby the girl became pregnant. They had <i>adat</i> marriage in 2015. As underage marriage is strongly discouraged as it risks reproductive health of women who are unprepared and still psychologically unstable, it should not be too easy to grant dispensations to underage marriages if there are no logical reasons for the children's interest. Their marriage (pregnancy) was caused by their social freedom and lack of supervision by the parents, so the future of newborn baby requires a complete family consisting of a father and a mother to raise, care and devote love for the baby's growth. Child protection aims to guarantee the fulfillment of children's rights in order to live, grow, develop and participate optimally in accordance with human dignity and values, and to be protected from violence and discrimination. Their marriage was a lawful marriage carried out by a Hindu religion so it has fulfilled the provisions of A2(1) of the Marriage Law. | A2(1) A6 A7 Marriage Law 1974<br>A3 Law No. 23 of 2002 on Child Protection                                     |   |
| H 47/Pdt.P/2016/PN,Srp | Semarang | granted  | parents of the husband candidate | Sudra<br>15-years-old at the time of marriage (2013) and was still in school | Katria<br>15-years-old at the time of marriage (2013) and was still in school | Their marriage was conducted according to Hindu and <i>adat</i> so it is legal ( <i>sah</i> ). According to the Decisions ( <i>Keputusan-keputusan dan Ketetapan-ketetapan</i> ) of the Parisada Hindu Dharma: the validity of Hindu marriage is determined by the presence of <i>panyangskara</i> with <i>bhuta</i> witnesses and witnesses as well as <i>penyaksi</i> (witness) from <i>prajuru adat</i> ( <i>adat</i> leader) as elements from <i>manusa saksis</i> . This is what is often referred to as <i>tri upasaksi</i> in marriage ceremony ( <i>samskara wiwaha</i> );  | A2(1) A6 A7 A8 A9 Marriage Law 1974<br>A330 Civil Code (KUHPerdata)<br>A56(2) Law No.23 2006 jo Law No.24 2013 | Decisions ( <i>Keputusan-keputusan dan Ketetapan-ketetapan</i> ) of the Parisada Hindu Dharma |



Appendix 3. List of sex crime cases.

| case                         | decision  | defendant  | victim  | pacaran | information   | reason   | state law cited  | adat/religious law cited  |
|------------------------------|---|--|---|---------|---|--|--|---|
| A 67/Pid.Sus/2013/PN.Dps.    | six months of imprisonment with one year of probation           | 18-years-old boy<br>Hindu<br>high school student                               | 18-years-old high school student                              | yes     | The girl is five month pregnant. She did not want to marry the boy as she already had another boyfriend. Now she is married to another person, and has given birth to her baby.   | Because of the pregnancy, the girl had to marry and become a housewife, resulting that she cannot enjoy her childhood with her peers.  | A81(2) Law No. 23 of 2002<br>A14(1), A22(1) KUHP<br>A29(1) Law no.3 of 1997<br>A143(2), A193(1), A222(1) KUHAP | religious norm that is not to have sexual intercourse outside of husband/wife relationship is violated                  |
| B 1/Pid.Sus.Anak/2015/PN Dps | one year of imprisonment & three months of vocational training  | 16-years-old boy<br>Islam<br>private worker<br>Junior high school graduate     | 13-years-old (the act started when she was still 9-years-old) | no      | The defendant masturbated on the victim, put his penis into her mouth and butt. The victim and the defendant were in the same foster care facility.   | The victim and her family do not condemn the defendant. The defendant himself has experienced sexual harassment at the age of 7. The act was not only once but continued over 3-4 years.   | A82 Law No.23 of 2002<br>A64(1), A289 KUHP<br>A6(2) UU No.48 of 2009<br>A193(1) KUHAP                          | 'religious norm' and 'norm in community': the sexual act is only for legality ( <i>sah</i> ) married adults.            |
| C 2/Pid.Sus.Anak/2015/PN Dps | one year of imprisonment & three months of vocational training  | 17-years-and-9 month-old boy<br>Hindu<br>no job elementary school graduate     | 13-years-old girl   | yes     | The defendant started a sexual intercourse while watching TV with the victim in his dorm.   | The defendant lured the victim into sexual intercourse with deception and lies, knowing that the victim is younger than 16 years old therefore is not yet to be married.   | A81(2) Law No.23 of 2002<br>A6(2) Law No.48 of 2009<br>A193 KUHAP  |   |
| D 4/Pid.Sus.Anak/2016/PN Dps | two years of imprisonment & three months of vocational training | 16-years-and-10-month-old boy<br>Islam<br>technician vocational school student | 16-years-and-5-month-old girl                                 | yes     | When the victim was reluctant to start sexual intercourse, the defendant convinced her by promising to take responsibility and by saying that he wanted sex as a proof of her love towards him. The defendant sent a SMS such as "just come to my room" "let's play" "come on." No mention about pregnancy. | The defendant caused shame on the victim among her community and school. He damaged her future. His action disturbed the society. The defendant is still young and there is still a chance to reflect himself and to continue his education. Peace has been made between the families of the victim and of the defendant. The victim's family has forgiven the act of the defendant. | A81(2) Law No.23 of 2002<br>A332(1) Law No.11 of 2012<br>Law No.8 of 1981                                      |   |
| E 7/Pid.Sus.Anak/2014/PN Dps | two years of imprisonment & three months of vocational training | 17-years-old boy<br>Hindu<br>student   | 16-years-old girl   | yes     | The defendant invited the victim to his room ("if you do not come in I will not take you back home") and started sexual intercourse. When the victim said "it hurts" the defendant immediately took   | Even though the act of intercourse was done on the basis of mutual willingness and there was no compulsion, the action of the defendant had negative impacts on the victim in the midst of her community.  | A81(2) Law No.23 of 2002<br>A193(1) KUHP<br>A6(2) Law No.48 of 2009<br>A71(3) Law No.11 of 2012                | sexual intercourse without legal marriage ( <i>sah</i> ) is against 'norm of decency' and 'legal norms' that damage the |

(continued)

Appendix 3. Continued.

| case                            | decision   | defendant  | victim            | <i>pacaran</i> | information  | reason  | state law cited  | <i>adat/religious law</i> cited                             |
|---------------------------------|--|--|-------------------|----------------|--|---|--|---|
| F 32/Pid.Sus.Anak/2016/PN Dps   | one year of imprisonment with two years of probation                     | 16-years-old boy<br>Hindu<br>vocational school student | 14-years-old girl | yes            | out his penis, but the victim was bleeding. The boy told the girl 'do not tell anybody. Do not tell your parents that we slept together. Tell them we just took walks.' It is <i>suka sama suka</i> case. The boy invited the girl to his room because he heard from his friend that she was not a virgin. Pregnancy test: negative.   | The victim's reputation got tainted, she is scorned by the surrounding community as the victim is not a virgin, resulting in a prolonged shame on both the victim and her extended family.<br>The defendant's act is not a good example for other children. His act has caused trauma and shame on the victim among her communities and her schools. His act damaged the future of the victim. His act disturbed the society. | A 332(1) KUHP<br>A 193(1) KUHP<br>A1(1), A81(1) Law No.23 of 2002<br>A6(2) Law No.48 of 2009<br>A71(3) Law No.11 of 2012 | reputation of the girl even if it was <i>suka-sama-suka</i> |
| G 1042/Pid.Sus.Anak/2013/PN Dps | three years and four months of imprisonment and a fine of Rp. 60,000,000 | 18-years-old boy<br>Islam<br>private worker            | 14-years-old girl | yes            | The defendant and the victim were in the same SMK. The victim first refused to have intercourse but the boy threatened not to take her home if she refuses. Because she was afraid of not being able to go home, she accepted. After the act the boy just sit down and did not take her home. One hour later he said "I want it again," to which the girl said "I do not want it," but the boy insisted "yes one more time. Then you can go home directly after."<br>The girl first refused to have sex because of fear for pregnancy, but the boy insisted and convinced her by telling her that he would take responsibility and marry her if she gets pregnant. Pregnancy test: negative. | The defendant's act damaged the future of the victim.<br>The defendant's act damaged the future of the victim.  | A81(2) Law No.23 of 2002<br>A1(1) Law No.3 of 1997<br>A22(4), A193(1), A222(1) KUHP<br>A332(1) KUHP                      |   |