

Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns

Abstract

This article addresses the dilemmas and compromises in legal practice around the issue of child marriage in Indonesia. Although the government set development goals that include ending child marriage and complying with human rights standard, it is facing a resisting reality. We researched the state legal system and law in practice to understand this resistance, finding that: 1) law-making in family law involves conflict between progressive and conservative ideas, 2) consequently there is friction within current family law and laws regarding human rights, 3) judges make compromises within their discretion, and 4) state law is creatively interpreted and applied at village level. The resistance at all these levels, arising from the religious concerns of conservative Muslims in a rapidly modernizing Indonesian society, is a formidable obstacle for the government to achieve its development goals. Adolescent sexuality is at the heart of these tensions.

Keywords: child marriage, Indonesia, Sustainable Development Goals, human rights, local governance, adolescent sexuality

I. INTRODUCTION

With an earnest look, Siti¹ followed the handshake between her father and her groom. She had not seen her father for ages, but here he was, as her guardian, stating that he agreed to marry off his daughter for a dower (mahr) of 2 grams of gold, her wedding ring. Wawan, her groom, replied - without stammering, she noticed - that he accepted this offer and the core of their religious marriage (ijab kabul) was over. The assistant marriage registrar (amil) led in prayer and then it was her turn, after her husband, to sign the papers. Her guardian and the two witnesses signed too and both Wawan and she received their marriage certificates. The ring! Yes, she smiled, 17, married...!²

Marrying at a tender age has long been common in many parts of the world. With increasing life expectancy prolonged adolescence became an option and marriage age changed. Today, marrying before 18 is defined by international organizations as “child marriage”, that should preferably end within a generation.³ Child marriage is considered a global problem that cuts across countries, cultures, religions and ethnicities.⁴ In the developing world, one in three girls is now a child bride and the actual numbers are rising with population growth.⁵ It is considered both a developmental problem and a question of human rights.

This article addresses the dilemmas and compromises in legal practices around the issue of child marriage in Indonesia, where the minimum age for marriage under state law is 16 for girls and 19 for boys.⁶ This means that in Indonesia there is a category of married girls aged 16 or 17 - like Siti - which according to international conventions is “child marriage”, but in Indonesian law is still considered as a standard marriage.⁷ The Indonesian government is actively involved in international conventions and has set development goals that include the aim to end child marriage and to comply with human rights standards, but at the same time it faces social resistance and a complex reality.

The methods we use are analysis of legal texts and their historical conception, analysis of the structure of legal institutions, interviews and case analysis at religious courts, and

¹ To protect their privacy we use pseudonyms for all our respondents.

² Observation at the Office of Religious Affairs, Sukaraja, 14th October 2016.

³ The current definition of child marriage is any formal marriage or informal union where one or both of the parties are under 18 years of age (Girlsnotbrides.org (2017a)). Girls Not Brides is a global partnership of over 700 civil society organizations committed to ending child marriage.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ We use “underage marriage” for marriages under this minimum age for marriage.

⁷ There are boys who marry before 18, but boys’ marriage is not as frequent as girls’ marriage, and is still underresearched.

ethnographic research in a village in West Java. Our main findings are: 1) law-making in family law is a negotiation process between progressive and conservative ideas, leading to compromises, 2) consequently there is friction within current family law and laws related to human rights, 3) judges make compromises within their discretion, and 4) legal implementation is creatively applied at village level by key actors.

This article contributes to socio-legal studies on Indonesian family law. While there is significant knowledge on the issues of divorce⁸, polygamy and mixed marriage cases⁹, and disputes over inheritance¹⁰, child marriage remains an underexplored area of study. There is a growing body of academic work on child marriage elsewhere, such as in Honduras, Uganda, Nigeria and Iran.¹¹ But there is still a void in the literature on child marriage in Indonesia. Reports of international and local organizations¹² on child marriage in Indonesia commonly present such marriage as a harmful practice, but we maintain some distance from this global development/human rights framework, allowing us to reveal the tensions arising from the religious concerns of conservative Muslims regarding adolescent sexuality in a rapidly modernizing society.

In the article we first portray the perception of child marriage in human rights and developmental discourse, as well as the policies of the Indonesian government regarding this issue. We continue to examine state regulations, illustrating the dilemma the Indonesian government faces in achieving its development goals while considering the religious discourse. The following two sections explain first the role of institutions in the registration of marriage, then describe the practice at the state courts' level, focusing on marriage dispensation. The last three sections illustrate child marriage at village level, the various ways of practicing illegal underage marriage and the role of intermediary figures who facilitate such practices.

II. CHILD MARRIAGE AND DEVELOPMENT IN INDONESIA

Indonesia ranks seventh in the global top ten with the highest absolute numbers of child marriage.¹³ UNICEF Indonesia reports that in 2012, roughly 1,349,000 girls married before the age of 18. Some 300.000 of them married before 16. Surprisingly, after decades of steady

⁸ van Huis (2015) and O'Shaughnessy (2009).

⁹ Butt (2008).

¹⁰ von Benda-Beckmann (1984) and Bowen (2003).

¹¹ See Murphy-Graham & Leal (2015), Wodon et al. (2016), Bunting (2005), Asghari (2017).

¹² Organizations such as ICRW, Plan Indonesia, UNICEF, and Rumah Kitab.

¹³ UNICEF Indonesia (2016), p 1.

decrease, the average child marriage rate plateaued at around 25 percent between 2010 and 2013.¹⁴

In global discourse child marriage is considered a harmful tradition, that violates human rights.¹⁵ The main negative consequences for girls are reduced education opportunities, reproductive health hazards (difficult deliveries, and a higher risk of HIV/AIDS; premature babies with disabilities) and increased risk of mother and child mortality. Child marriage is also a source of psychological trauma as well as domestic and sexual violence. In its worst form, it leads to exploitation of child brides as domestic servants or as victims of sex trafficking, either within their marriage or after, when they are left divorced or abandoned.¹⁶ Child brides in Indonesia struggle with these phenomena too.¹⁷

Besides the problems for individuals, there are also negative consequences of child marriage for society. Maternal mortality, low levels of education, and high divorce rates have a negative impact on people's livelihood. Child marriage gives rise to intergenerational poverty.¹⁸ Indonesia has a large young population, but to realize their economic potential, the younger generations must have access to quality education, adequate nutrition and healthcare (including sexual and reproductive health). This is where child marriage comes in as a disturbing factor. Child marriage in Indonesia caused a loss of at least 1.7 per cent of GDP in 2014.¹⁹ This explains the urgency of ending child marriage from an economic developmental perspective.

The Indonesian government acknowledges the damaging impact of child marriage and it supports the new Sustainable Development Goals for the period 2015-2030. Ending child marriage is one of the targets. SDG 5.3 reads: Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation.²⁰ The Indonesian government is also actively involved in international conventions, having ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1984 and the Convention on the Rights of the Child (CRC) in 1990.

President Joko Widodo's government recently got praise for its national strategy to eliminate violence against children, including innovative endeavours to alleviate poverty

¹⁴ UNICEF Indonesia, *supra* note 13, p. 2.

¹⁵ Sustainabledevelopment.un.org (2017); *ibid*, p. 1.

¹⁶ Turner (2013), p. 30.; Equality Now (2014), p. 7.

¹⁷ Kartikasari (2016), p. 22-5.; BPS & Unicef (2016), p. 7.

¹⁸ BPS & Unicef (2016), p. 8.

¹⁹ UNICEF Indonesia, *supra* note 13, p. 1.

²⁰ Sustainabledevelopment.un.org (2017).

through social protection schemes.²¹ The Smart Indonesia Card subsidises primary and secondary students from lower socio-economic backgrounds, supporting the policy target of 12-year compulsory education instead of the present 9 years. A new national health insurance scheme has been introduced to improve health care for all. These are important steps that also help prevent child marriage. Behind the scenes, a program to eliminate child marriage is already included in the Government Work Plan 2017-2018.²² The president also requested the Ministry of Empowerment for Women and Protection of Children to prepare a proposal for a *Perppu* (Government Regulation In lieu of Law) on the elimination of child marriage, which has been drafted in 2016 in cooperation with civil society organisations.²³ So, in principle the government supports measures to prevent child marriage in line with the SDGs. One of the instruments to achieve this goal is law.

III. THE MAKING OF STATE LAWS: DILEMMAS, COMPROMISE AND CONTRADICTIONS

In the quest for legal unification in Indonesia, there have been constant struggles to accommodate diverse ideologies and norms, often resulting in dilemmas, compromises and contradictions. The Marriage Law 1974²⁴ is a good illustration of such compromises. In this section, we first discuss the controversy arising out of the enactment of the Marriage Law, then introduce some state laws on the definition of children and the minimum age for marriage.

When in 1973 the government submitted the draft bill of the Marriage Law to the parliament, one of its intentions was to enhance women's rights in marriage.²⁵ However, some Muslim organizations and the Islamist party PPP (*Partai Persatuan Pembangunan*) strongly opposed the bill, arguing that it was too "modern". They staged walk-outs from parliament sessions, which led the government to conclude that the potential cost of pushing through its proposal would be too high.²⁶ The government understood that the Law needed to accommodate the diversity in marriage practices and the normative notions underlying them.²⁷ As a result the government changed several articles in the draft, including the article on marriageable age. The initial draft proposed the minimum marriageable age to be 18 for

²¹ Tempo.co (2017).

²² Interview with Sylvana Apituley, chief expert staff at Deputy V of the Presidential Staff, 11th March 2017.

²³ Kartikasari (2016).

²⁴ UU Nomor 1 Tahun 1974 Tentang Perkawinan.

²⁵ Pompe & Otto (1990), p. 419.

²⁶ Cammack, Young, & Heaton (1996), p. 62.

²⁷ Bedner & van Huis (2010), p. 180.

women and 21 for men.²⁸ However, after facing strong opposition from conservative Muslims, the government lowered the age to 16 for girls and 19 for boys.

A recent judicial review of the 1974 Marriage Law at the Constitutional Court, instigated by women's and youth organisations, in order to raise the minimum age for marriage, was rejected. During the hearings, all major religious organizations' opinions were presented. The judges seemed to ignore the views of moderate Islam and non-Muslim experts on the negative consequences of child marriage for girls and referred only to the Muslim standard of *akil baligh*, mental and physical maturity, as a measure of marriageability.²⁹ The only dissenting opinion amongst nine judges, that was referring to human rights and development, came from the sole female judge (and non-Muslim), Maria Farida Indrati.³⁰

Although Article 7 (1) of the Marriage Law limits marriage to 16 for girls and 19 for boys, technically anyone can marry below that age if the court gives its consent, as Article 7 (2) allows the parents of underage parties to petition for a dispensation to the court. The Law on Human Rights of 1999³¹ defines children as *all unmarried* persons under the age of 18, which makes all married children, regardless of their age, fall outside its scope of protection. Consequently, they lose their rights ensured by the Law on Human Rights, such as rights to education, information, to rest and to mix with children of their own age. This problematic definition also clashes with the Child Protection Law of 2002³², which defines a child differently, namely as a person less than 18 years of age, including unborn children.

IV. THE ROLE OF VARIOUS INSTITUTIONS IN THE STATE REGISTRATION OF MARRIAGE

In registering marriages in Indonesia, several institutions play their roles: the civil court holds jurisdiction over marriage and divorce of non-Muslims, while the religious court has jurisdiction over Muslim marriage and divorce.³³ To register marriages and divorces, couples also go to different offices at their sub-district: non-Muslims to the Civil Registration Office

²⁸ The Draft Marriage Law of 1973, Article 7(1): 'marriage is permitted only if the male has reached the age of 21 years and the female has reached the age of 18 years'.

²⁹ YPHA.or.id (2015).

³⁰ She stated that the original Marriage Law was a compromise 41 years ago, and that Indonesian society since then had developed a much more advanced understanding of human rights. She also argued that the continuing use of the age of 16 for marriage for girls produces legal uncertainty vis-à-vis other laws that are based on the understanding of the age of 18 marking the end of childhood (CC judgment no. 30-74/PUU-XII/2014: 237, 239).

³¹ UU Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia.

³² UU Nomor 23 Tahun 2002 Tentang Perlindungan Anak.

³³ Cammack & Feener (2012), p. 27.

(KCS, *Kantor Catatan Sipil*), and Muslims to the Office of Religious Affairs (KUA, *Kantor Urusan Agama*).

Both religious and civil courts can authorize underage marriages by granting marriage dispensation. When granted dispensation, the letter from the court allows petitioners to register their marriages even when the marrying spouse is under the official minimum age for marriage (16 for girls, 19 for boys).³⁴ As our research area is a Muslim majority area, we focus on religious courts and KUA.

Article 2 of the Regulation on Marriage Registration issued by the Ministry of Religious Affairs³⁵ clarifies the role of marriage registrars (PPN, *Pegawai Pencacat Nikah*), as the employees of KUA, the Office of Religious Affairs, who examine the requirements as well as monitor and record Muslim marriage and divorce. In Article 15, the Regulation indicates that in case the requirements to marry are not fulfilled, PPN are forbidden to register such marriages.³⁶ The Civil Registration Law No.23 of 2006 further sets various penalties for fraud or failure to register a marriage.³⁷ Nurlaelawati describes the KUA as placed at the intermediary level between ‘*ulama*’ (traditional religious authorities) and the religious courts, and finds KUA officials considering themselves more as guardians of the *shari’a* and of the interpretations of the *ulama* than as state officials.³⁸ She further emphasizes KUA’s insight into marital problems because KUA officials themselves are firmly rooted in local society.³⁹

Besides KUA staff at the office of religious affairs, local leaders such as the village head (*kepala desa*) and *amil* play an important role in preparing marriage registration. The *amil* is an assistant marriage registrar at village level (P3N, *Pembantu Pegawai Pencacat Nikah*), who supports the PPN at sub-district level. In practice, they register marriages at KUA in cooperation with PPN, so that people in the village almost never need to go to KUA and leave all the dealings to their *amil*. The detailed practice will be explained later in this article.

V. LEGAL PRACTICE OF UNDERAGE MARRIAGE: PERSPECTIVE AND JUSTIFICATION BY JUDGES

³⁴ Article 6 of the PP Nomor 9 Tahun 1975 tentang Pelaksanaan UU Nomor 1 Tahun 1974 tentang Perkawinan

³⁵ Peraturan Menteri Agama Republik Indonesia Nomor 11 Tahun 2007 tentang Pencatatan Nikah.

³⁶“Marriage registrars are prohibited from assisting implementation and registration of marriages if:

1. The requirements referred to in Article 5 (2) are not met;

2. Knowing of violation of the terms or conditions of marriage.” (translated by the authors).

³⁷ Huis & Wirastris (2012), p. 10.

³⁸ Nurlaelawati (2010), p. 189.

³⁹ *Ibid*, p. 189.

As explained earlier, Article 7 (2) of the Marriage Law 1974 allows marriage dispensation to be issued by courts. As the article does not set any condition or requirement for judges to grant dispensation, it gives significant discretion to judges. Both Horii's research on religious courts in West Java (including our research area) and a report from Plan International found that more than 90% of the marriage dispensation cases brought to courts are approved.⁴⁰ Horii's analysis on court decisions indicates that fear for *zinah* (the sin of premarital sexual relations) is the most influential factor for judges to grant dispensations, and that they do so to protect girls from social stigma if they may have already engaged in sexual intercourse.⁴¹ Thus, judges seek to protect girls through granting marriage to allow them to escape the emotional stress resulting from social pressure, as well as to protect their unborn children who might otherwise be labelled as illegitimate.⁴² Her analysis of the court decisions also mentioned that judges cite Islamic laws based on *Quran* and *Sunnah*⁴³ as often as state laws, while they never applied any aspect of the Indonesian Child Protection Law, or referred to international human rights.

So, judges at religious courts facilitate legal underage marriages. However, dispensations are roughly estimated to account for only 8% of child marriage cases.⁴⁴ What happens with the other cases?

VI. HETEROGENEITY OF CHILD MARRIAGE AT VILLAGE LEVEL

To understand why the court is not more often involved in cases of underage marriage, we use the findings of an ethnographic study at village level, in the northern part of the Sukabumi district in West Java. The roughly 8000 inhabitants are originally migrants from other regions of West Java, attracted over a century by the large tea plantation that dominated the local economy until about twenty years ago. Most households have a modest income: around 40% of the population is considered poor according to local standards. Sundanese culture and Islam are the shared elements in this village, but there is a range of Islamic orientations, from

⁴⁰ Horii (2015), p. 24; Evenhuis & Burn (2014), p. 27.

⁴¹ Horii, *supra* note 40, p. 24.

⁴² *Ibid.*, p. 24.

⁴³ The sayings and deeds of the Prophet Muhammad.

⁴⁴ The number of dispensations granted in Indonesia in 2012 is about 8,500. This figure is calculated by multiplying the approval rate of marriage dispensation in religious court (90%) by the total number of dispensations submitted to courts in 2012 (9,632 cases). Additionally, the estimated number of girls that marry under age 15 each year is about 110,000 (UNICEF Indonesia (2016), p. 1).

traditionalist syncretism, Islamic modernism, to a *Persis* group from Bandung and a puritan Salafist community.⁴⁵

This heterogeneity is reflected in the different types of child marriage that we found during our fieldwork. The two main types are love matches of young people choosing their own partners, and marriages inspired by orthodox beliefs that encourage early matrimony.⁴⁶ The driving force behind most child marriage is the fear of *zinah*. Marriage is the only accepted solution in cases of teenage pregnancy, as abortion is forbidden by law and access to contraception is very limited for unmarried couples. But marriage is also used as a defence to pernicious slander when a dating couple is considered as getting too intimate. Aulia was pushed to marry at 15. “It took my mother a month to persuade me to get married,” Aulia says. “She kept saying: ‘Don’t embarrass me’.” They had just started dating and had certainly no marriage in mind. But “There was all this shaming,” her husband recalls. “I hadn’t actually kissed her and everybody gossiped about her being pregnant.”⁴⁷

In general, girls today have more agency in the *choice of a partner* than their mothers. This is helped by increased mobility: mobile phones and education outside the village.⁴⁸ However, refusing a marriage proposal is considered to bring bad luck to the girl. So girls must keep their dates out of sight of their parents if they are not ready to marry them. Parents on the other hand, still have a big say in the *timing of the marriage*. When gossip about *zinah* gets unbearable, instant marriage is arranged to secure the honour of the girl and her family.⁴⁹ Aulia is a good example. Sometimes adolescents use the same argument to push unwilling parents into arranging a marriage for them.

Minimum age for marriage here is not counted in years. People refer to the Muslim concept of *akil baligh*, mental and physical maturity, as a sign of marriageability. For boys ‘*kuat gawe*’ (able to work) is a local benchmark.⁵⁰ For girls, the onset of puberty means they are ready for marriage, since they are in the first place destined to become mothers and (house)wives. Teenage marriage is widely accepted, although there is a simultaneous trend towards later marriages.

⁴⁵ See Shepard (2014), p. 235 - 46 for an explanation of the different doctrinal orientations. *Persis* is a doctrine from the 1920s that accepts only teachings from the Quran and Hadith, opposing heresy, myth and superstition.

⁴⁶ See Grijns et al. (2016) for the complete typology.

⁴⁷ Topsfield & Rosa (2017).

⁴⁸ See also van der Kooy (2017), who did research in the same area.

⁴⁹ Honour is less of an issue for men, but in principle the impregnator must marry the girl, unless in cases of incest.

⁵⁰ Kartikasari (2016), p. 14.

Child marriage is not necessarily considered bad. On the one hand, there are outcomes that are appreciated by adolescents, such as the preservation of their honour, the right to a sexual relation and their increased status as adults, that give them a say in community life. On the other hand, there is regret. Girls are deprived of further education, they miss their old friends and live in social isolation with heavy domestic work and responsibility for their husband and children. It is said that 50% of child marriages end in divorce after one or two years,⁵¹ because of incompatibility and the struggle to run a household together. In Siti's case love evaporated faster than it took to flourish. They divorced after Wawan lost his job. Girls that have children will remain responsible for them and, if they left their parental home upon marriage, often return to live with their parents.⁵²

To establish the local prevalence of child marriage, we conducted a survey amongst all families with children aged 20-24 years old. Table 1 shows that young teenagers already marry at age 14 or 15. From the age of 17 the frequency of marriage jumps for women in this age-group, followed by the men at age 19.⁵³

<i>Age</i>	Ever-married												Never-married			
	<i>14</i>	<i>15</i>	<i>16</i>	<i>17</i>	<i>18</i>	<i>19</i>	<i>20</i>	<i>21</i>	<i>22</i>	<i>23</i>	<i>24</i>	<i>Blank</i>	<i>Total</i>	<i>_</i>	<i>%</i>	<i>Total</i>
<i>Gender</i>																
<i>Male</i>		1	1		2	11	9	6	8	4	4	1	47	138	74%	185
<i>Female</i>	2	7	9	25	22	20	21	9	5	3		1	124	61	33%	185
<i>Total</i>	2	8	10	25	24	31	30	15	13	7	4	2	171	199	54%	370

Source: 2014 Village Survey

We found that amongst ever-married women in our survey 35% experienced a child marriage (< 18). For men, it was 8.7%. Nine girls (7.3%) reported underage marriage (<16), as did seven boys (8.7% <19). These figures are higher than the average in this district. But when analysing qualitative case studies of early marriages, we discovered that there was even

⁵¹ Koalisi Perempuan Indonesia (2016), p. 3.

⁵² See also similar findings in neighbouring Cianjur by van Huis (2015), p. 151-2 and p. 169.

⁵³ The figures for marriage from 20-24 are not fixed yet, because the respondents are between 20-24 years old, so in the following years they might still get married before they are 25.

more hidden underage marriage. There actually appeared to be a whole repertoire of illegal practices.

VII. ILLEGAL PRACTICES AROUND UNDERAGE MARRIAGE: PROCEDURES AND REASONS

When people in the village need a solution for unwanted situations, they do not go to court for marriage dispensation, but turn to local solutions. A court case is assumed to be costly⁵⁴ and scary (some associating the court with criminal cases).⁵⁵ The community prefers the safest, fastest, affordable way, which is outside the state legal scheme.

Marriage starts with a religious ceremony, *ijab kabul* being the core for Muslims.⁵⁶ This is a sufficient step for solving problems of dishonour caused by unwanted pregnancy or too intimate dating. But without registration, such a marriage is not legal per state law, also, it means no access for the new household to welfare support from the state.⁵⁷ And any children born from the couple will only be registered in the name of the mother (bringing the shame of being considered an illegitimate child and loss of inheritance rights).⁵⁸

The trick thus is, how and when to register underage religious marriage to make it legal. Depending on the reasons behind a child marriage, there are three local procedures⁵⁹:

1. Raising the age of the bride or groom by changing the birthdate in the required documents, thereby enabling them to receive their official marriage certificates right after the religious ceremony. This is facilitated by the village head (or lower staff) and the *amil*. It is a fast solution for girls who are already pregnant and want to protect their honour and that of their unborn child. But it is also used to let the bride ‘jump’ to 17, the minimum age for an identity and family card⁶⁰ which opens doors to factory work and welfare support. When Nenen was going to get married at 15, her father just went to the *amil* with Rp. 50,000 (€ 3,50), as her mom said, “from her heart”. The *amil*

⁵⁴ van Huis, *supra* note 52, p. 154.

⁵⁵ People’s reluctance to go to courts is not just related to underage marriages, but also to divorces. According to the *amil*, it was not before 2014 that for the first time he handled two divorce cases that went to the religious court, and up till now there were no cases from the village that went for marriage dispensation.

⁵⁶ See Bedner & van Huis (2010), p. 179, on the religious nature of the marriage as its core.

⁵⁷ Marriage Law 1974 Article 2 (1) (2).

⁵⁸ See van Huis, *supra* note 52, p. 232-4, on registration of polygamy cases and a Constitutional Court judgment on children born out of wedlock, that might give them inheritance rights.

⁵⁹ Interviews by Aminah and Navita, with village head, 26th May 2016 at his home and with *amil*, 27th May and 26th June 2016, at his home.

⁶⁰ A list of various minimum ages in laws and regulations, ranging from 17-21, was collected by Anggara et al. (2015), p. 43-45. The low minimum age for marriage for girls (16) is a notable exception.

accepted this and came to their house to marry them. In her marriage certificate Nenen found herself 17 years old.⁶¹

2. *Isbath nikah*, or having a marriage recognised retroactively by the court, is quite a common, pragmatic, procedure.⁶² But in the case of an underage child, parents cannot arrange *isbath nikah* at court, because it is at the same court that they should have applied for dispensation first. So, they resort to a local version of *isbath nikah*. This often happens when adolescents are pressured to get married early for moral reasons. They will not register their marriage for a while, so that they may split up again easily if the relationship does not work out well. If a pregnancy follows, the marriage can still be registered via the local *isbath nikah* route. Bedner & van Huis observe that this “allows adolescents in rural areas more sexual liberty than they would otherwise be likely to enjoy”.⁶³

The *amil* deals with two variants of backdating, depending on his attendance at the religious ceremony. If he attends, he will not issue a marriage certificate, but he just notes the marriage in his register, without assigning an official number yet. Only when the couple has reached the proper age will they go to KUA, pretending it is a new wedding. Their marriage will be registered with an official number in the archives of the KUA and they will receive their backdated marriage certificate. This is a cheaper procedure, because it involves only the *amil*, so there are fewer people who need a ‘gift’ for their services.

The second option for backdating a wedding date is more complicated. The religious ceremony would have only been attended by a religious leader, so it takes the *amil* extra effort to get such a marriage registered via a backdoor route. Some young girls from an orthodox background marry, divorce and remarry quite quickly and only apply to register their second or third marriage, when the relationship seems more stable and the couple seriously plans a family.

3. Arranging a so-called ‘secret’ religious marriage (*nikah siri*) that will remain unregistered. *Nikah siri* is not very common. It is only facilitated by some conservative religious leaders in a private setting, with no involvement of the *amil* or any other authority. The cases we encountered were of girls that were handpicked at

⁶¹ Interview by Aminah and Navita, with Nenen and her mother, 24th May 2016 at their home. This is a poor family, her mother earning only Rp. 125,000 a month.

⁶² Bedner & van Huis, *supra* note 56, p. 188.

⁶³ *Ibid*, p. 188.

ages below 15 by religious leaders from outside the village who took them as second or third wives. This way their husbands avoid asking a permission letter from the first wife, a legal obligation for polygamy. The girls and their children have no inheritance rights, nor do the girls have the right of female-petitioned divorce.

The do-it-yourself approach at the village level helps (parents of) couples that experience pre-marital pregnancy, or are accused of too intimate dating. But the system offers little protection in cases of domestic or sexual violence. In general brides-to-be are not told what marriage entails and they are usually also ignorant about the illegal preparations behind underage marriage. If problems arise, parents or other relatives arrange divorce⁶⁴ by settling the issue between the two families or with help of village bureaucrats. But the lack of protection is serious in forced or violent unregistered child marriages. If the wife does not dare to complain about the violence or assumes that violence is a husband's right, it is difficult for her to escape.

VII. ILLEGAL PRACTICES AROUND UNDERAGE MARRIAGE: THE ROLE OF MARRIAGE REGISTRARS, *AMIL* AND *KUA*

The *amil* and the village head (or lower village bureaucrats) are central actors⁶⁵: they do not only arrange underage child marriage, but are often also involved in mediating the divorces that regularly happen after child marriage, handing out divorce papers, arranging 'customized' birth certificates and smoothing cases of adultery. The *amil* can help people marry, even when they come to him to ask for a wedding on the next day (instead of waiting for the legally prescribed ten days). The creative solutions for circumventing procedural rules on underage marriage lead to a chain of other violations of rules. In a recent case of rape, the young victim was forced by her father to marry her violator to prevent loss of honour. She missed her final (elementary!) school exam and had to move in with her husband. When her mother, who worked as a domestic helper in Jakarta heard about this, she implored the school teachers and the *amil* to find another solution. In the end the marriage was annulled, the girl was declared

⁶⁴ There is no big taboo on divorce in Sundanese culture.

⁶⁵ There is a parallel with what Lipsky (1980), p. 27, called street-level bureaucrats. He mentions the relatively high degrees of discretion and regular interaction with citizens as notable features of jobs at the lowest level of public services.

‘never-married’ and allowed to sit for her final exams⁶⁶, so that her mother could take her to school in Jakarta.

The local community, in particular fathers as legal guardians of their girls, together with the village bureaucracy, the *amil* and KUA create their own support system to solve legal issues that resonate with local cultural and religious norms and values. It is at the KUA where marriages need to be registered, but in most of the cases KUA staff can pretend not to be aware of the manipulation happening at the village level. The government maintains some distance between KUA and the community by regularly rotating staff. *Amils* as assistant marriage registrars and *penghulus* (marriage registrars) work closely together on the registration of marriages: they have regular monthly meetings, where *penghulus* sign the official letters to register marriages which the *amils* prepared already in their village, if needed in cooperation with the village staff. When the *penghulus* are too busy to officiate all weddings in the various villages of their district, the *amil* is asked to stand in at weddings in his own village. In other words, the *penghulu*, as an official of KUA, simply registers cases prepared by the *amil* and relies on his role as assistant to deal with all the work in his village. This division of roles between *amil* and *penghulu* allows villagers just to deal with their own *amil* without ever having to go to the KUA. So, at the KUA all documents are ‘clean’ and the employees do not need to fear sanctions.

As an intermediary between the state institution and the people, the *amil* is in a difficult position. He understands why people need underage marriage as a solution for shameful situations, and considers the rules of the society. He faces a dilemma – state law can’t always meet people’s needs, so he must be flexible. There is great pressure from the community on the *amil* to perform according to their expectations. The *amil* told us, grinningly: “The village head is aware of this. If the community is not being served maybe this house and the village office would be attacked”.⁶⁷ On top of that the *amil* is the only unpaid official⁶⁸: he is not on the payroll of the KUA, nor of the village administration, but depends on the proceeds of his own land, the gifts of people that come for his help⁶⁹ and his informal share of the payments that go to the *penghulu* for marriages that he as *amil* officiated.

⁶⁶ Although there is no official rule, girls that are married or get pregnant cannot continue their education. Ever-married girls with or without babies, divorced or not, seldom go back to school.

⁶⁷ Interview by Aminah and Navita with *amil*, 27th May 2016, at his home.

⁶⁸ Huis & Wirastrri (2012), p.15, argue that an assistant marriage registrar should be made into a civil servant and be paid, to avoid fraud in marriage registration.

⁶⁹ It is a common custom to pay people like traditional midwives, Quran teachers and religious leaders for their services in gifts (in cash or in kind). There is no fixed tariff, but it is up to people’s capacity what they give. We heard of gifts from Rp. 50,000 – 200,000.

Penghulus are in a similar dilemma - they might be aware of the negative impact of underage marriage on girls but they feel they cannot do much because traditional norms are still very strong and they will meet serious opposition from the community. According to one of the *penghulus*, law in the village is a combination of religious, cultural and state values which regulate the community.⁷⁰ Religious law in villages is interpreted and explained by local religious leaders who each teach their version of Islamic theology and laws, including the legal validity of Islam. *Penghulus*, as state representatives, are themselves religious authorities and are more influenced by local norms than by their superiors, because they are part of the community and share the same values.

VIII. CONCLUDING REMARKS

Our findings indicate that child marriage is sustained based on conservative Muslim interpretations of how to deal with adolescent sexuality, which is to control immorality through marriage. Although the Indonesian government officially agrees with international goals and policies aiming at elimination of child marriage, and despite the efforts of human rights bodies and civil society organisations, national discourse on this issue is dominated by a conservative Islamic perspective. Moderate religious voices, women and children's rights and developmental issues are not acknowledged in this discourse. The recent judicial review (mentioned in part III) is a good example of the strong political power of conservative Islamic discourse in Indonesia.

The tension between how the Indonesian government presents itself and this dominant national discourse is visible in both the law-making process and existing laws. The initial drafters of the Marriage Law 1974 had to compromise because of resistance from an Islamist party. Within existing state laws, such as the Marriage Law 1974, the Law on Human Rights of 1999 and the Child Protection Law of 2002, contradictions come to the fore. Judges, within their discretion given by a set of state laws, at times reach judicial decisions to permit underage marriages. They do so by referring both to state laws and Islamic laws.

At the local level, village bureaucrats create their semi-autonomous social field, which sustains customs, rules and symbols internally but is also vulnerable to rules and decisions from outside the field.⁷¹ They use their unofficial support system to solve legal issues in a way that are in accordance with local cultural and religious norms and values. Such a system is

⁷⁰ Interview with *Penghulu A*, 30st May 2016, Sukaraja.

⁷¹ Moore (1973), p. 720.

created to meet the needs of their local community. Villagers almost always resort to this unofficial system without any involvement of state institutions. Our findings on these village practices are specific to our research area, but our main conclusions are relevant for other areas in Indonesia as well. Practices such as covering the shame of extra-marital sexual relations, manipulating age and wedding dates, marriage dispensation, as well as handling teenage pregnancy by arranging child marriage, are found elsewhere in Indonesia, including in non-Muslim areas. The main differences are related to customs around kinship (bilineal in Java versus patri- or matrilineal in other areas) and the size of dower or bride prices (which are relatively modest in our research area).⁷²

We consider the dilemmas and compromises seen at each level of society as the results of continuous struggles with the diversity of values on marriage, family and adolescent sexuality. The question is whether law is effective in supporting the government's developmental policy which aims to end child marriage. On the one hand, formal law can create an "enabling environment"⁷³ and strengthen those who seek the elimination of child marriage. But for those who are against a fixed marriage age (whether it is 16 or 18), it will only stimulate underground practices of child marriage. The solution proposed by the Girls not Brides civil society platform is "not to condemn all traditions, but to work with communities to change traditions from within".⁷⁴ Not an easy solution, but unavoidable, as we have seen.

To protect women's and children's rights the government could focus more on supporting laws and policies on gender equality, on education and on sexual and reproductive health rights. But in the end, it is unavoidable for the government, to achieve its human rights and development goals, to also deal with cultural and religious concerns on adolescent sexuality.

⁷² Research done by Rumah Kitab (Marcoes & Putri (2016)) and CPPS GMU & Plan Indonesia (2011) demonstrates similar practices in other Muslim areas. A report by Koalisi 18+ (Eddyono et al. (2016)) proves that marriage dispensation is widely-practiced. In several workshops that we organized in Indonesia, discussions on child marriage in areas such as Lombok, Bali, Aceh, Sumatra, Sulawesi and other parts of Java, supported our findings.

⁷³ See the parallels with the efforts to eliminate female genital cutting in Senegal in the research of Shell-Duncan et al (2013), p. 804, 812.

⁷⁴ Girlsnotbrides.org (2017b).

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