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Child marriage as a choice: rethinking agency in international human rights

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3 Compromises between legal obligations and religious concerns: the Indonesian state policies and child marriage in a village in West Java

3.1 INTRODUCTION

With an earnest look, Siti 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. The core of their religious marriage (ijab kabul) was over. The assistant marriage registrar (amil) led the prayer and then it was her turn, after her husband, to sign the papers. Her guardian and the two witnesses also signed, and both Wawan and her received their marriage certificates. The ring! Yes, she smiled, 17 and married...!¹

In Indonesia, the minimum age for marriage under state law at this moment is 16 for girls and 19 for boys. So in Indonesia, there is a marriage category that includes married girls aged 16 or 17, like Siti. That category is considered ‘child marriage’ under international conventions and a standard marriage under Indonesian law. The Indonesian government actively engages in international conventions. It has set development goals to end child marriage and comply with human rights standards. However, it also faces social resistance at every level of society. Religion plays a crucial role. In Section 1.2.2, I explained the reasons I chose Indonesia and Bali as the main case study. Before focusing on the Balinese contexts in Chapters 4, 5, and 6, this chapter examines the state laws and policies that are applied throughout Indonesia, including Bali. As Indonesian national policies are closely linked to Islamic power and concerns, this chapter will look into legal practices in the Muslim majority area of Indonesia, by referring mainly to research in West Java. This research consists of interviews and case analysis at religious courts that I conducted for a previous research project (Horii 2015), and ethnographic research in a village conducted by Mies Grijns (Grijns et al. 2016).

Section 3.2 portrays the Indonesian government’s policies regarding this issue, in relation to the perception of child marriage in the international development discourse. Section 3.3 examines state regulations, illustrating the dilemma the Indonesian government faces in achieving its development goals while considering Islamic power and concerns. The next two sections will explore legal practices in West Java to better understand the relation-

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

ship between state law, Islam, and child marriage. Section 3.4 explains the role of institutions in registering a marriage and then describes the practice at the state court's level, focusing on marriage dispensation. Section 3.5 discusses child marriage at a village level, the various ways of practising illegal underage marriage, and the role of intermediary figures who facilitate such practices. Considering the legal and political structure and the local practice of child marriage, Section 3.6 returns to the discussion on the minimum age for marriage and the desirability of such legal reforms.

3.2 CHILD MARRIAGE AND DEVELOPMENT IN INDONESIA

Indonesia ranks seventh globally in countries that have the highest absolute numbers of child marriage (UNICEF Indonesia 2016: 1). UNICEF Indonesia reports that in 2012, roughly 1,349,000 girls married before the age of 18, and some 300,000 of them married before 16 (Ibid). Surprisingly, after decades of steady decrease, the average child marriage rate plateaued at around 25% between 2010 and 2013 (UNICEF Indonesia and UNICEF 2016; Badan Pusat Statistik (BPS) 2016).

As discussed in Chapter 2, the global discourse considers child marriage to bear all kinds of negative consequences for girls. These consequences include reduced education opportunities, reproductive health hazards (difficult deliveries and a higher risk of HIV/AIDS; premature babies with disabilities), and an increased risk of mother and child mortality. Other problems associated with child marriage include domestic and sexual violence, as well as the 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 (Turner 2013: 30; Equality Now 2014: 7).

Besides the individual problems, the global discourse also mentions the societal consequences of child marriage, such as maternal mortality, low levels of education, and high divorce rates that harm people's livelihoods. According to UNICEF Indonesia (2016: 1), child marriage gives rise to intergenerational poverty. Indonesia has a large young population. The younger generations must have access to quality education, adequate nutrition, and healthcare (including sexual and reproductive health) to realize their economic potential. This is where child marriage comes in as a disturbing factor. UNICEF claims that child marriage in Indonesia caused a loss of at least 1.7 per cent of GDP in 2014 (Rabi et al. 2015). From an economic development perspective, these perceived macro consequences justify the urgency of ending child marriage.

The Indonesian government acknowledges the damaging impact of child marriage and supports the new 2015-2030 Sustainable Development Goals. 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.² The Indonesian government also actively engages in international conventions. It 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 was recently praised for its national strategy to eliminate violence against children, including innovative endeavours to alleviate poverty through social protection schemes.³ 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 steps could also help prevent child marriage. Behind the scenes, a program to eliminate child marriage is already included in the Government Work Plan 2017-2018.⁴ 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. The regulation was drafted in 2016 in cooperation with civil society organizations (Kartikasari 2016). So, in principle, the government supports measures to prevent child marriage in line with the SDGs. One of the measures is the law, which the next section will discuss.

3.3 THE MAKING OF STATE LAWS: DILEMMAS, COMPROMISE AND CONTRADICTIONS

3.3.1 The controversy over the marriageable age and Marriage Law 1974

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. Marriage Law 1974 is a good illustration of such compromises. In this section, I first discuss the history of controversy over the marriageable age, particularly over Marriage Law 1974, and introduce some state laws that define children.

2 Sustainable Development Knowledge Platform, <https://sustainabledevelopment.un.org/?menu=1300> (accessed on November 7, 2019).

3 Tempo.co, "UN's Praises for Indonesia's Efforts to Prevent Child Violence" <https://en.tempo.co/read/news/2017/02/27/074850809/UNs-Praises-Indonesias-Efforts-to-Prevent-Child-Violence> (accessed on November 7, 2019).

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

Debates on the marriageable age started a century ago under the Dutch colonial government. The European standard then was that girls were allowed to marry at the age of 15, and boys at 18, and the colonial government identified marriage below those ages as a cause of poverty, hindering development, and thus attempted to prevent and forbid it by law (Van Bemmelen and Grijns 2019: 291). But community-level enforcement continued to fail due to gaps between government and local realities, including the strong influence of local religious actors (Ibid: 294-300). At that time, the growing number of Western-educated Indonesians advocated against marrying young (Blackburn and Bessell 1997: 119). For instance, a 1912 weekly newspaper for women (*Soenting Melajoe*), under the heading “Undesirable customs of ours”, reads: “One of these customs is parents marrying young girls to old men. [...] How bad this is!!! Abandon this bad custom, copy the Europeans!” (Ibid: 110). In contrast, the conservative groups resisted arguments voiced by a youth group that was “keen to adopt ‘modern’ ways that favored a larger degree of individual freedom. They argued, e.g., ‘It is right for parents to choose the husband. [...] If you leave it to a girl, she may be tricked into marriage by a womanizer or misled by men who deceive girls as we read about in Europe’” (Ibid: 111). These stories demonstrate that, since colonial times, child marriage and marriageable age have been discussed in terms of *adat*, religion, and ‘modern’ or ‘Western’ lifestyles.

The debates and contestations continued after independence and culminated in the drafting process of the 1974 Marriage Law. This law was ultimately a compromise, following a political struggle between groups advocating progressive ideas of women’s rights and those favouring more conservative ideas of marriage based on their interpretations of Islamic texts. When in 1973, the government submitted the draft bill of the Marriage Law to the parliament, one of its main intentions was to enhance women’s rights in marriage (Pompe and Otto 1990: 419). However, some Muslim organizations and the Islamist party PPP (*Partai Persatuan Pembangunan*, United Development Party) strongly opposed the bill, accusing the government of hostility against Islam (Sidel 2018: 107). They staged walkouts from parliament sessions. These walkouts led the government to conclude that the potential cost of pushing through its proposal would be too high (Cammack, Young, and Heaton 1996: 62). As a result, the government changed several articles in the draft, including the article on marriageable age. The initial draft proposed that the minimum marriageable age be 18 for women and 21 for men.⁵ However, after facing strong opposition from conservative Muslims, the government lowered the age to 16 for girls and 19 for boys.

5 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’.

In 2014, the Constitutional Court rejected a judicial review of the 1974 Marriage Law, instigated by women's and youth organizations to increase the marriageable age for girls from 16 to 18. 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. They referred only to the Muslim standard of *akil baligh*, mental and physical maturity, as a measure of marriageability.⁶ The only dissenting opinion amongst nine judges, which was referring to human rights and development, came from the sole female, non-Muslim judge, Maria Farida Indrati.⁷ Even after losing the case at the Constitutional Court, the campaigners continued pushing for this legislative change. With their second petition, they succeeded in winning the case in 2019. With the decision, the marriageable age for girls will be raised to 19.⁸ Section 3.6 will return to discussing the latest policies on the minimum age for marriage, and their effects.

3.3.2 The Marriage Law and other laws with a definition of children

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. Article 7 (2) allows the parents of underage parties to petition for a dispensation from the court. As the article does not set any condition or requirement for judges to grant dispensations, it gives judges significant discretion.

While girls can legally marry at the age of 16 or lower (with a dispensation), the Law on Human Rights of 1999⁹ defines children as all *unmarried* persons under the age of 18. So under the Law on Human Rights, married persons, regardless of age, are no longer considered children. They then fall outside that law's scope of protection, losing the right to education, information, and to rest and mix with children of their age. The UN Committee on the Rights of the Child voiced its concerns, stating that "in some State parties

6 ECPAT Indonesia (2015), "Pernyataan sikap Koalisi 18+ atas Keputusan MK", <https://ecpatindonesia.org/berita/pernyataan-sikap-koalisi-18-atas-keputusan-mk/> (accessed on November 7, 2019).

7 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).

8 Misiyah Direktur Institut Kapal Perempuan (Steering Committee Gender Watch-Program), "Revisi Terbatas UU Perkawinan Agenda Mendesak", <https://mediaindonesia.com/read/detail/260064-revisi-terbatas-uu-perkawinan-agenda-mendesak> (accessed on November 7, 2019).

9 UU Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia.

married children are legally considered adults, even if they are under 18, depriving them of all the special protection measures they are entitled to under the Convention” (Committee on the Rights of the Child 2007).

The exclusion of married persons from the definition of children contradicts the Child Protection Law,¹⁰ which defines a child as any person being less than 18 years of age. The Child Protection Law is clearly inspired by the UN Convention on the Rights of the Child. The Law’s Article 2 refers to the national Pancasila¹¹ ideology, the 1945 Constitution, and the CRC’s basic principles. The Child Protection Law includes parental responsibilities, including the responsibility to prevent underage marriages (Article 26 (1) c).

This section presented Indonesia’s state laws on marriageable age, and laws that define children and their rights. The overview demonstrates that religious power and liberal human rights advocates have had significant influences on law-making over the last decades. The gap between these groups results in compromises and contradictions within current family law and laws related to human rights. The next section will examine the various institutions that play roles in implementing these laws.

3.4 THE ROLE OF VARIOUS INSTITUTIONS IN THE STATE REGULATION OF MARRIAGE

Several institutions regulate marriages in Indonesia: the civil court has jurisdiction over non-Muslim marriage and divorce disputes, while the religious court has jurisdiction over Muslim disputes (Cammack and Feener 2012: 27). Non-Muslims register their marriages at the Civil Registration Office (KCS, *Kantor Catatan Sipil*), and Muslims register theirs at the Office of Religious Affairs (KUA, *Kantor Urusan Agama*). However, only religious and civil courts may decide on dispensations for underage marriages. When granting a dispensation, the court letter allows petitioners to register their marriage even when at least one spouse is under the official minimum marital age (i.e., 16 for girls and 19 for boys).¹² Since I collected data in a Muslim majority area, this chapter in particular focuses on religious courts and KUA. Chapter 4 will deal with marriage registration for non-Muslims.

10 UU Nomor 23 Tahun 2002 Tentang Perlindungan Anak.

11 The five pillars of the Indonesian state are included in the preamble of the 1945 Constitution. They are a belief in God, nationalism, humanism, democracy, and social justice. The New Order regime (1966-1998) turned these five pillars into a single ideology, which served as a means of promoting national unity amidst diversity.

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

3.4.1 Marriage registration office for Muslims

For Muslims, Article 2 of the Regulation on Marriage Registration (issued by the Ministry of Religious Affairs¹³) clarifies the role of marriage registrars (PPN, *Pegawai Pencatat Nikah*). The registrars are employees of KUA, the Office of Religious Affairs, who examine requirements and monitor and record Muslim marriage and divorce. In Article 15, the Regulation indicates that if the marriage requirements are not fulfilled, PPN are forbidden to register such marriages.¹⁴ The Civil Registration Law No.23 of 2006 sets various penalties for fraud or failure to register a marriage (Van Huis and Wirastri 2012: 10). Nurlaelawati (2010: 189) describes the KUA as placed at the intermediary level between '*ulama*' (traditional religious authorities) and the religious courts. She finds that KUA officials consider themselves more as guardians of *shari'a* and interpretations of the *ulama* than as state officials. She further emphasizes KUA's insight into marital problems in practice because KUA officials themselves are firmly rooted in local society (Ibid).

Local leaders such as the village head (*kepala desa*) and *amil* play an important role in preparing marriage registrations. The *amil* is an assistant marriage registrar at the village level (P3N, *Pembantu Pegawai Pencatat Nikah*), who supports officials at the sub-district level. In practice, they register marriages at KUA in cooperation with PPN, so that people in the village rarely need to go to KUA and can leave all of the dealings to their *amil*. This practice will be explained in detail later in this chapter.

3.4.2 Legal practice of underage marriage: judicial perspectives and justifications

As explained earlier, Article 7 (2) of Marriage Law 1974 grants courts discretion in issuing marriage dispensations. My previous research on religious courts in West Java and a report from Plan International Australia found that more than 90% of the marriage dispensation cases brought to courts are approved (Horii 2015; Evenhuis and Jennifer Burn 2014). The number of applications has increased significantly in recent years, reaching 9,632 in 2012 (Indonesian Legal Aid Association for Women 2012). According to Koalisi 18+'s report on marriage dispensation cases in three different districts in Indonesia (Tuban, Bogor and Mamuju), marriage dispensation was granted in 367 out of 377 cases (Eddyono et al. 2016). The most common

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

14 "Marriage registrars are prohibited from assisting the 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)

reasons for applying were “*pacaran*” (dating), “*akil baligh*” (maturity to get married), and readiness to be housewife/breadwinner (Ibid: 189).

In my previous study, the court decision analysis indicated that fear of *zinah* was the most influential factor for judges to grant dispensations. They did so to protect girls from social stigma if they may have already engaged in sexual intercourse (Horii 2015). Thus, judges sought to protect girls through granting marriage to allow them to escape the emotional stress resulting from social pressure and to protect their unborn children, who might otherwise be labelled as illegitimate (Ibid). My analysis also found that judges cite Islamic laws based on the *Quran* and *Sunnah*¹⁵ as often as state laws, while they never applied any aspect of the Indonesian Child Protection Law, or referred to international human rights.

One of the Islamic principles that judges refer to as guiding their decisions is “*kemaslahatan*” (common good) (Ibid). *Kemaslahatan* stipulates that avoiding harm is more important than doing good (Ibid). This concept of avoiding “causing harm” (*madharat* or *mafsadat*) may lead judges to rule in favour of child marriage for young pregnant girls. They may do so to protect them from the social stigma they may suffer for being an unwed mother, since for them, avoiding harm (social stigma) is more important than doing good (avoiding child marriage) (Ibid).

So judges at religious courts facilitate legal underage marriages for the protection of children, namely girls and babies. However, dispensations account for roughly only 8% of underage marriage cases. This figure is calculated with the number of dispensations granted in Indonesia in 2012 (8,500), divided by the estimated number of girls that marry under the age of 15 each year (110,000) (UNICEF Indonesia 2016: 1). The number of dispensations 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).

3.5 CHILD MARRIAGE IN A RURAL MUSLIM SETTING

3.5.1 Heterogeneity of child marriage

If the court facilitates only 8% of underage marriages, how do ‘underage’ people marry in other cases? To understand why the court is not more often involved in such cases, I collaborated with Grijns, who conducted an ethnographic study at the village level in the northern part of the Sukabumi district in West Java. The roughly 8,000 inhabitants are originally migrants

15 The sayings and deeds of the Prophet Muhammad.

from other regions of West Java. They were attracted over a century ago 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. Still, there is a range of Islamic orientations, from traditionalist syncretism to more puritan communities, from Islamic modernism to a *Persis* (*Persatuan Islam*) group from Bandung and a puritan Salafist community.¹⁶

This heterogeneity is reflected in the different types of under-18 marriages that Grijns found during her fieldwork. The two main types were love matches (i.e., young people choosing their partners) and marriages inspired by orthodox beliefs that encourage early matrimony (for the complete typology, see Section 1.1.3). The driving force behind most child marriage is the fear of *zinah*. Marriage is the only acceptable solution in cases of teenage pregnancy since abortion is legally forbidden and access to contraception is very limited for unmarried couples. Marriage is also used as a defence to pernicious slander when a dating couple is considered to be getting too intimate. For example, Aulia was pushed to marry at 15. “It took my mother a month to persuade me to get married,” Aulia says.¹⁷ “She kept saying: ‘Don’t embarrass me’”. They had just started dating and certainly did not have 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”.

In general, village girls today have more agency than their mothers had in their *choice of a partner*. Increased mobility helps, aided by mobile phones and education outside the village.¹⁸ However, parents still have a big say in the *timing of the marriage*. When gossip about *zinah* gets unbearable, instant marriage is arranged to secure the girl and family’s honour.¹⁹ Aulia is a good example. Conversely, some adolescents successfully use the same argument to push unwilling parents into arranging a marriage for them.

The minimum marital age is not counted in years. People refer to the Muslim concept of *akil balig* (i.e., mental and physical maturity) as a sign of marriageability. For boys ‘*kuat gawe*’ (being able to work) is a local benchmark (Kartikasari 2016: 14). For girls, the onset of puberty means they are ready for marriage since they are destined to become mothers and (house)wives.

16 See Shepard (2014: 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 ‘un-Islamic’ heresy, myth, and superstition.

17 These quotes are from the newspaper article written by Topsfield and Rosa (2017). Grijns helped these journalists interview the girls in the village, and was present during the interviews.

18 See also van der Kooy (2016), who did research in the same area.

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

Teenage marriage is widely accepted, although there is a trend towards later marriages.

What international institutions define as ‘child marriage’ is not necessarily considered bad in this local context. On the one hand, adolescents appreciate certain outcomes. These include the preservation of their honour, the right to a sexual relationship, and their increased status as adults, which gives them a say in community life. On the other hand, there is regret. Most girls are deprived of further education, they miss their old friends, and many live in social isolation with heavy domestic work, and are responsible for their husband and children. 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. If they left their parental home upon marriage, they often return to live with their parents.²⁰ Sundanese culture does not place a large taboo on divorce, unlike many other areas of Indonesia, including Bali (see Chapters 4, 5, and 6).

Grijns’ 2014 village survey found that 35% of ever-married women aged 20-24 were first married before the age of 18. However, when analysing qualitative case studies of early marriages, Grijns discovered that there were more hidden underage marriages. There appeared to be a whole repertoire of illegal practices, as the next section will discuss.

3.5.2 Illegal practices around underage marriage: procedures and reasons

When people in a village need to react to unwanted situations, they look for local solutions rather than going to court for a marriage dispensation. They assume a court case would be costly (Van Huis 2015: 154) and scary, and some associating court with criminal cases.²¹ The community prefers the safest, fastest, and most affordable solution, which usually means acting outside the state’s legal scheme.

Marriage for Muslims consists of a religious ceremony, an *ijab kabul*.²² This is sufficient for couples and families to avoid the feeling of dishonour caused by an unwanted pregnancy or overly intimate dating. But without registration, such a marriage is not legal under state law. This means that the new household has no access to state-funded welfare.²³ If the couple have children, they will only be registered under the mother’s name, which brings

20 See also similar findings in neighbouring Cianjur by Van Huis (2015: 151-2, 169).

21 People’s reluctance to go to courts is related to divorces as well as underage marriages. According to the *amil*, he handled two divorce cases that went to the religious court for the first time in 2014. By the date of my fieldwork, there were no cases from the village regarding marriage dispensations.

22 See Bedner and Van Huis (2010: 179) on the core religious nature of marriage.

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

shame on the child for being considered illegitimate and means they lose inheritance rights (detailed in Sections 3.6 and 4.2.3).²⁴

A religious marriage must be registered at certain times in specific ways to avoid those consequences. Depending on the reasons behind an underage marriage, there are four local procedures:²⁵

1. *Katrol usia* (literal translation being ‘pulley of age’): This procedure involves increasing the bride or groom’s age by changing their birth-date in the required documents, enabling them to receive their official marriage certificates right after the religious ceremony. The village head (or lower staff) and the *amil* facilitate the change. It is a fast solution for girls who are already pregnant and want to protect their honour and that of their unborn child. It is also used to let the bride ‘jump’ to 17, the minimum age for an identity and family card,²⁶ which makes her eligible for factory work and welfare support. For example, when Nenen was going to get married at 15, her father went to the *amil* with Rp. 50,000 (€ 3,50). The *amil* accepted this and came to their house to marry them. In her marriage certificate, Nenen was listed as being 17 years old.²⁷
2. *Isbath nikah* (i.e., having a court recognize a marriage retroactively) is quite a common, pragmatic procedure (Bedner and Van Huis 2010: 188). However, parents cannot arrange *isbath nikah* in court for an underage child, because they should have first applied there for a dispensation. 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 they can easily split up if the relationship does not work out. If a pregnancy follows, the marriage can still be registered through the local *isbath nikah* route. Bedner and Van Huis observe that this “allows adolescents in rural areas more sexual liberty than they would otherwise be likely to enjoy” (Ibid).
3. Backdating a wedding date: The *amil* deals with two backdating variants, depending on whether he attends the religious ceremony. If he attends, he does not issue a marriage certificate and notes the marriage in his register without assigning an official number. When the couple

24 See Van Huis (2015: 232-4) on the registration of polygamy cases and a Constitutional Court judgment about children born out of wedlock that might give them inheritance rights.

25 Interviews with the village head at his home, 26th May 2016; Interviews with the *amil* at his home, 27th May and 26th June 2016.

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

27 Interview 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.

reaches the proper age, they go to KUA, pretending it is a new wedding. KUA registers their marriage with an official number in the KUA archives, and they receive their backdated marriage certificate. This is a cheaper procedure because it only involves the *amil*, so fewer people need a 'gift' for their services. The second backdating option is more complicated. Only a religious leader would have attended the religious ceremony, so it takes the *amil* extra effort to register such a marriage through a backdoor route. Some young girls from orthodox families marry, divorce, and remarry quickly. They then only apply to register their second or third marriage, when the relationship seems more stable, and the couple seriously plans a family.

4. Arranging a 'secret' religious marriage (*nikah siri*) that will remain unregistered. Only certain conservative religious leaders facilitate this in a private setting, without the *amil* or any other authority. Grijns encountered cases of girls below age 15 who were handpicked by religious leaders from outside the village, who took them as second or third wives. This way the husbands avoided asking the first wife for a permission letter, a legal obligation for polygamy. The girls and their children do not have inheritance rights; neither do the girls have the right to a female-petitioned divorce.

The do-it-yourself approach at the village level helps (the parents of) couples with a pre-marital pregnancy or who are accused of overly intimate dating. However, the system offers little protection against domestic or sexual violence. Brides in unregistered marriages cannot obtain a legal divorce since they have not been married under state law. In registered marriages, women do have access to the legal divorce procedure in court. However, in unregistered marriages, women are left only with religious procedures for divorce, in which only husbands can initiate and conclude the divorce. In general, brides-to-be are not told what marriage entails, and they are usually ignorant about these consequences of underage marriage.

3.5.3 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 actors in underage marriage practices.²⁸ Besides facilitating underage child marriage, they are also often involved in arranging the divorces that regularly happen afterwards, handing out divorce papers, arranging 'customized' birth certificates, and smoothing over cases of adultery. The *amil* can

28 There is a parallel with what Lipsky (1980: 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.

help people get married, even when they come to ask him for a next-day wedding, sidestepping the legally prescribed 10-day waiting period. The creative solutions for circumventing procedural rules on underage marriages are sometimes used for a forced marriage too. In a recent village case of rape, the exceptionally young victim was forced by her father to marry her abuser to prevent her 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. The marriage was eventually annulled, the girl was declared 'never-married' and allowed to sit her final exams,²⁹ and her mother could take her to school in Jakarta.

The local community (especially fathers, being the legal guardians of their daughters) 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 that marriages need to be registered. However, in most cases, KUA staff can pretend to be unaware of village-level manipulation. The government maintains some distance between KUA and the community by regularly rotating staff. *Penghulus* work as marriage registrars, with *amils* closely assisting them. They have regular monthly meetings, where *penghulus* sign the official marriage registration letters that the *amils* already prepared in their village, potentially with the village staff. When the *penghulus* are too busy to officiate all of the different district village weddings, they ask the local *amil* to officiate weddings in his village. In other words, the *penghulu*, as a KUA official, simply registers cases prepared by the *amil* and relies on him to deal with all of the village-level work. This role division between *amil* and *penghulu* allows villagers to deal with their *amil* without ever having to go to the KUA. At the KUA, all documents look '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 acknowledges societal rules. State law cannot 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. During one interview, the *amil* told us, grinning: "*The village head is aware of this. If the community is not being served, maybe this house and the village office would be attacked*".³⁰ On top of that, the *amil* is an unpaid

29 Although there is no official rule, girls who are married or become pregnant cannot continue their education. Ever-married girls with or without babies, divorced or still married, seldom go back to school.

30 Interview with the *amil* at his home, 27th May 2016.

official.³¹ He is not on the KUA's or village administration's payroll. Instead, he depends on his own land's proceeds, gifts from people that come for his help,³² and his informal share of the payments that go to the *penghulu* for officiating marriages.

Penghulus are in a similar situation. They may be aware of underage marriage's negative impacts on girls. However, they feel that they cannot do much because of strong local norms and potentially serious community opposition to (attempts at) changing them. According to one of the *penghulus*, the law in the village is a combination of religious, cultural, and state values that regulate the community.³³ 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. Many of them are sensitive to local norms because they are part of the community and share the same values.

3.6 LEGAL REFORM ON THE MINIMUM AGE FOR MARRIAGE

The local practice of child marriage, its motivations, consequences and procedures, is illustrated by the case of a village in West Java. Considering such local practices, this section turns to their implications for legal reform of the minimum age for marriage. This discussion is especially relevant for today's Indonesian society, where the Constitutional Court has decided to increase the minimum age for marriage after campaigners filed a second petition (the first petition filed in 2014 has been rejected, see Section 3.3.1). After the court's decision, parliament legislated that 19 be the new minimum marital age for both women and men. There have also been some regional initiatives for similar changes. In 2015 and 2016, some provincial regulations (e.g., in Yogyakarta, West Nusa Tenggara, and South Sulawesi) were enacted to prevent child marriage. Some of them set the local marriageable age above that set by the 1974 Marriage Law. Indicating that changes are possible, these measures have fuelled activists' efforts to end child marriage through legal reforms.

The question is whether legal measures will be sufficiently effective. Even if the marriageable age is raised, there are at least four ways to get married outside of the state legal system, as the previous section indicated. These

31 Huis & Wirastris (2012: 15) argue that an assistant marriage registrar should be made into a civil servant and paid to avoid fraudulent marriage registrations.

32 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 and people give according to their means, e.g., from Rp. 50,000 to Rp. 200,000.

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

ways can be costly, with lots of small bribes paid to local actors throughout the process. Likewise, high costs are incurred in seeking a marriage dispensation from a court, which is another way to legalize an underage marriage. Applicants seeking such dispensations, usually the parents of the young bride or groom have to travel to the court at least three times, in some cases hours away from their village, and then pay for the procedure. Such procedures can cause even more problems for families already facing trouble in their community, e.g., due to the social stigma attached to pregnancy out of wedlock, which is the most common reason for early marriages.

Unregistered marriages are especially problematic. They leave wives and children vulnerable, lacking legal protections such as welfare support for the new household, inheritance rights, and the right to a legal divorce procedure. Moreover, children born from unregistered marriages cannot obtain a normal birth certificate (*akta kelahiran*), necessary for access to education. A so-called 'single birth certificate' (*akta tunggal*) can be issued outside of marriage, but these 'deviant' certificates often bring with them a social stigma and bullying for the child (see Section 4.2.3). Despite the financial and social costs involved, underage marriage remains prevalent, and no quick solution is apparent. Increasing the marriageable age is likely to increase the frequency of those underground marriages, therefore increasing the number of vulnerable children and causing families to become even more vulnerable.

Another problem with the legislative measures to increase the minimum age for marriage (i.e., effectively banning child marriage) is that such measures treat *all child marriages alike*. Campaigns and legislative measures to ban child marriage are often motivated by the stereotypical image of child marriage, which is a forced one driven by poverty, typically with a big age gap between an unhappy small girl and an abusive older man. In reality, there is much diversity in the types of child marriage, as the following chapters on Bali will demonstrate.³⁴

These legislative reforms have noble intents: To uphold human rights norms, to protect children, and to empower women. However, they do not offer an effective solution to the prevalence of child marriage in Indonesia. At worse, they could aggravate the problem. Even if the law bans child marriage, children will continue to be married outside of the legal system, as long as motivation remains. A large number of child marriages will go underground, rendering the married couples legally unprotected and thus even more vulnerable. Furthermore, by failing to consider the diversity of child marriages, the proposed one-size-fits-all legal reform fails to address

34 See also Grijns et al. (2019) for different types of child marriage in various regions in Indonesia.

the broader underlying issues that spur child marriage in the first place (e.g., adolescent sexuality). I will further discuss this in Chapter 5.

The Dutch East Indies attempted a similar legal reform to forbid child marriage. Kern, an advisor for the Dutch Office for Native Affairs, concluded that such legislation was unfeasible and undesirable for several reasons. First, young marriage was a practice defended by the Indonesians. Second, legislators could not intervene in the most intimate affairs of the Native populations, except in the most urgent cases. Third, opposing the practice would create conflict with Islamic law (Blackburn and Bessell 1997: 116-7). In his view, the only answer was “to rely on the social evolution already under way in the Indies” (Ibid). In today’s reform discussion, is there any other answer? Chapters 5, 6 and 7 include my proposals for alternative reforms.

3.7 CONCLUSIONS

The findings presented in this chapter indicate that child marriage is sustained through conservative Muslim interpretations of how to deal with adolescent sexuality, i.e., to control immorality through marriage. Until the Constitutional Court ruled to increase the marriageable age in 2019, the conservative Islamic perspective dominated the national discourse on this issue. The 2014 judicial review was a good example of the strong political power of conservative Islamic discourse in Indonesia. This dominance of Islamic values is understandable, given that the family law rules have a firmer textual basis in the Koran than other legal topics (Cammack, Young, and Heaton 1996: 50-51).

The Indonesian government officially agrees with international goals and policies that aim to eliminate child marriage. The tension between how the Indonesian government presents itself to the international community and the influential Islamic discourse was visible in both the law-making process and existing laws. The initial drafters of Marriage Law 1974 had to compromise because of resistance from an Islamist party. Contradictions exist within existing state laws (e.g., Marriage Law 1974, the Law on Human Rights of 1999, and the Child Protection Law). Judges, within their discretion under state laws, at times reached judicial decisions to permit underage marriages. They did so by referring to both state and Islamic laws.

In 2019, the national debate on the marriageable age took a different turn. The continuous advocacy and lobbying by human rights bodies and civil society organizations have come to bear fruit, and the Constitutional Court has accepted their petition for increasing the marriageable age. The court ruled that Article 7 of the 1974 Marriage Law is a form of gender-based discrimination, hence unconstitutional (Sapiie 2019). The decision also con-

cerns the negative impact of child marriage on children's rights to health and education.³⁵ Parliament subsequently has agreed to set the age at 19 for both women and men.³⁶ Still, research findings at the local level suggest the challenges of implementing such state rules.

At the local level, Muslim village bureaucrats create a semi-autonomous social field, which sustains customs, rules, and symbols internally. It is also vulnerable to rules and decisions from outside the field (Moore 1973: 720). They use their unofficial support system to solve legal issues in a way that accords with local cultural and religious norms and values. Such a system is created to meet their local community needs. Villagers usually resort to this unofficial system without any involvement from state institutions. Grijns' and my findings on these village practices are specific to our research area, but the main conclusions are relevant for other Indonesian areas as well. Using marriage to cover the shame of extra-marital sexual relations (Karolus, Dewi, and Partini 2019), manipulating age and wedding dates (see Chapter 4), marriage dispensations (Fadhli 2019; Eddyono et al. 2016), and reacting to teenage pregnancies by arranging child marriage (I'anah 2019; Idrus 2019); these practices also occur elsewhere in Indonesia, including in non-Muslim areas. The main differences are related to kinship customs (e.g., bilineal in Java versus patri- or matrilineal in other areas) and the size of dower or bride prices (e.g., relatively modest in our research area).

The observations I made with Grijns lead me to conclude that the dilemmas and compromises seen at each level of society are the results of continuous struggles with the diversity of values on marriage, family, and adolescent sexuality. The question is whether the law is effective in supporting the government's developmental policy that aims to end child marriage. On the one hand, formal law can create an "enabling environment" (Shell-Duncan et al. 2013: 804, 812) and strengthen those who seek to eliminate child marriage. On the other hand, it is likely to stimulate underground practices of child marriage. One-size-fits-all legislative measures, such as banning child marriage, fail to address the broader underlying issues that spur child marriage in the first place, such as education and adolescent sexuality. To protect women's and children's rights, the government could instead focus more on supporting laws and policies on gender equality, education, and sexual and reproductive health rights. Chapters 5, 6, and 7 will partially discuss alternative reforms.

35 UU Nomor 16 Tahun 2019 Tentang Perubahan Atas UU Nomor 1 Tahun 1974 Tentang Perkawinan.

36 DEWAN PERWAKILAN RAKYAT REPUBLIK INDONESIA, "Paripurna DPR Sepakat 19 Tahun Jadi Batas Usia Minimal Perkawinan", <http://www.dpr.go.id/berita/detail/id/25935/t/Paripurna+DPR+Sepakat+19+Tahun+Jadi+Batas+Usia+Minimal+Perkawinan> (accessed on February 6, 2020)

