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When do “children” become “adults”? Transitions in children’s rights and child marriage

Mies Grijns and Hoko Horii

Introduction

When Risky married Widi, the former was eighteen and the latter was sixteen or seventeen years old. They had been in a courtship (*pacaran*) since junior high school, and after four years of *pacaran*, Widi became pregnant. Widi did not tell Risky about the pregnancy at first, but eventually he found out about it through her parents, who came to tell him to take “responsibility.” He said he was “a little scared” at that time, but his father told him that he would “just have to accept it.” When we asked whether he thought about not marrying Widi after finding out about the pregnancy, he said “no, I have to marry (*harus nikah*), as his father.” We asked who said “*harus nikah*,” then he said “myself.” He was ready to marry Widi, and he *wanted* to marry her. It was Widi’s parents who initiated the discussion about marriage, and Risky’s father pushed for it. Risky, as his father’s *son* and still under his supervision, seemed to accept what his father said and further internalized the norm that it was necessary to marry when his girlfriend became pregnant. However, he was also already becoming a father. Risky was ready to marry Widi, to take his responsibility as the baby’s *father*—therefore, no longer a child.

In Indonesian society, children are no longer considered children when they marry, because then they start their own family and have to carry responsibilities as a husband/wife or father/mother. The transition is not just about physical age, but also includes mental maturity—*dakil baligh*.¹ We find that there is a similar concept in global children’s rights discourse: evolving capacity. The idea is to acknowledge that children are and should be able to decide on their own according to the development of their cognitive capacity.² It proposes to assess the decision-making by children not just in terms of physical age, but also in terms of cognitive capacity that gradually develops and individually differs. This principle is crucial for the realization of the rights of young adolescents who are transitioning into “adults.”

However, the current global children's rights/human rights regime tends to lean toward a paternalistic and protectionist approach (Cantwell 2016; Hopgood 2017) by setting a threshold between children and adults, and their cognitive ability, of eighteen years of age. Within the current regime, this principle of "evolving capacity" is difficult to implement in practice, and is perhaps the most unfulfilled aspiration in children's rights (Lundy 2007; Shier 2001; Tisdall 2017; Tobin 2015; Varadan 2019). We might say this is a silent crisis of rights for young adolescents.

The evolving capacity principle highlights that there is a gray zone, a transitional phase between what is called "childhood" and "adulthood," and that the process is gradual, individual, and contextual. When do children become adults? The struggle in implementing this principle perhaps stems from the complexity and sensitivity of addressing this question: the discussion on the transition from childhood to adulthood is loaded with the question of power, control, dependence, and independence in the interaction between children, their caretakers, and the state. Several scholars examined the transition to adulthood for young people with disabilities (Ferguson et al. 1988; Fish 1986; Mitchell 1998; Murphy et al. 2011; Osgood et al. 2010; Tyyskä 2001). Fish (1986, 16), for instance, identified a number of markers of adult status, including (1) employment, useful work, and valued activity; (2) personal autonomy and independence; (3) social interaction and community participation; and (4) roles within the family. Ferguson et al. (1988, 180–185), by studying the transition of young people with learning difficulties to adulthood, conceptualized their transition in terms of (1) bureaucratic transitions (shift to the adult service system); (2) family life transitions (changes in established routines and responsibilities within family units); and (3) status transitions (a series of events, such as leaving school, getting a job, and moving away from home). Mitchell (1998) points out that the concept of "transition" is often constructed by symbols and professionals involved, interring that the transition involves elements of power, independence, and autonomy. She criticizes the "traditional idea for sharp institutional status transition," as transition is more personal (Mitchell 1998, 250).

The term *adolescence* is often used to identify this transitional period between childhood and adulthood, but without unified definitions and with different categorizations of age groups. The dividing lines are confounded by general understanding, scholarly research, and official definitions used by the state and transnational organizations. In everyday usage in North America, for instance, the term *adolescent* is used for those between fifteen and twenty-four, and *teenager* for those between thirteen and nineteen (Tyyskä 2001, 8). The World Health Organization (WHO) defines an adolescent as those who are aged between ten and nineteen, and refers

to young people as individuals between ages ten and twenty-four (World Health Organization n.d.). The United Nations (UN) defines “youth” as those persons between the ages of fifteen and twenty-four (United Nations General Assembly 1981, para. 8). The UN Committee on the Rights of the Child (2016, para. 5) recognizes that puberty occurs at different ages and does not seek to define adolescence, focusing instead on “childhood” from the age of ten to eighteen. In the EU’s national legislation, the term *adolescence* is not often neither defined nor unified: only five Member States use it to describe children between the ages of twelve/fifteen/sixteen and eighteen years (European Union Agency for Fundamental Rights 2017).

In natural science research, adolescence represents a time of physical, psychological, cognitive, emotional, and social change. Medical studies define adolescence as the cessation of linear growth in the years following the attainment of final height, peak bone mass, and peak muscle mass (Gleeson and Clayton 2007). Psychologically, the adolescent moves from dependence on caretakers to achieve relative independence, and neuroscience and psychology is interested in cognitive and behavioral changes during this period (see e.g. Casey et al. 2010). Cognitively, adolescents are believed to develop abstract thinking and reasoning. Emotionally, they are supposed to develop a sense of identity during late adolescence; social involvement, peer interaction, as well as sexual interest, develop in this phase (Kar et al. 2015). Last but not least, adolescence is a phase of transition during which major developments in sexuality take place. Puberty is reached during adolescence, which is a major landmark in the development of sexuality under the influence of the hormone-releasing axis (Kar et al. 2015).

Some approach the concept of youth in relational terms, with reference to the social processes whereby age is socially constructed, institutionalized, and controlled in historically and culturally specific ways. For instance, Cote and Allahar (1996) argue that the position of youth is often manipulated by politically and economically powerful groups. Arnett (2004) has suggested that what is generally referred to as “late adolescence” is “emerging adulthood.” In 1950, Erik Erikson, a student of Freud, described adolescence in modern Western societies as a “psychosocial moratorium,” a period of freedom from pressures of adult responsibilities, which allows young people to experiment before settling on a lifelong career (Schwartz et al. 2018). This suggests that, against the backdrop of the development of the concept of transition period between childhood and adulthood, there are societal changes that took place in modern societies, marked by rapid changes in vocational opportunities and lifestyles.

While the literature on adolescence is mostly based in Western/developed countries, this chapter will turn to transition in Indonesia by examining the case of child marriage. Marriage is often seen as the threshold for entering

adulthood, so it is an apt case to analyze the transition. What are the markers of the transition? Are there definitive markers such as the age of eighteen, or is the transition perceived rather as stages and shades of gray, as “evolving capacity” suggests in principle? We will look at the concepts of childhood and adulthood and the transition between them at global, national, and local levels, which will allow us to reflect on what “evolving capacity” actually could mean.

Global and national concept of childhood/adulthood/transition

Global minimum age standards

The Convention on the Rights of the Child (CRC) defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier” (Art. 1). Some articles in CRC call for the introduction of minimum ages without specifying what that age should be; e.g. Article 32 requires an age for the admission to employment, and Article 40 imposes an obligation to establish a minimum age below which children cannot be held criminally responsible. More generally, Article 37 requires that when children are deprived of their liberty, the needs of their age must be taken into account.

It is clear that the UN treaty bodies avoid controversial articles but compensate for this ambiguity with general comments issued by the committee. The UN Committee on the Rights of the Child (2007), in General Comment No. 10, recommends that the absolute minimum age of criminal responsibility should be twelve years. In General Comment No. 4, the Committee recommends that States increase the minimum age for marriage with and without parental consent to eighteen years, while allowing for exceptional circumstances, in which a mature and capable child over the age of sixteen may marry (UN Committee on the Rights of the Child 2003). It also entails the recommendation to set a minimum age for sexual consent, which should be equal for boys and girls, yet without specifying at what age this should be set (UN Committee on the Rights of the Child 2003). These general comments are not legally binding.

As these various age standards set by the transnational institutions suggest, minimum-age legislation essentially relies on chronological, linear definitions of childhood and adolescence. Such chronological age definitions miss out on important differences in the individual development and experience of these phases in life. For example, Huijsmans et al. (2014, 3) argue for a relational approach to age, pointing out that “chronological age is a form of ‘state simplification.’” Another critique is that the use of chronological

age definition reflects Western legal traditions and traditional psychological development discourses that assume that qualities of childhood and youth are universal and monolithic (Clark-Kazak 2009, 1308). However, in reality, “the experiences of children and young people vary widely in relation to social, political and environmental conditions, and individual characteristics” (Clark-Kazak 2009, 1308). Such a view hence questions the viability of global minimum ages from both an individual and a cultural perspective. Some scholars, indeed, criticize CRC as a representation of a Western vision of childhood, characterized as a state of undefined innocence and therefore in need of protection. It is seen “patronizing” (Desmet 2012), not fully respecting children’s agency. In sum, while most global legislation (if not all) seems to demarcate clear lines between childhood and adulthood based on chronological age, such an approach might be found to be in conflict with the concept of “evolving capacity.”

Indonesian state’s minimum age legislation

In Indonesian state law, various legislation sets different minimum ages for different activities. For instance, one latest discussion is the age of criminal responsibility. In 2012, the Juvenile Justice bill was developed to replace the Juvenile Court Law, increasing the minimum age for criminal responsibility from eight to fourteen years old (Kusumaningrum 2012).³ As for criminal activity against a child, the Penal Code criminalizes any sexual intercourse with those under fifteen under Article 287 (sexual intercourse with a child) and Article 290 (obscene acts against or seduction of a child). Another example is the Indonesian Residential Identity Card (*Kartu Tanda Penduduk*, KTP), which is issued upon reaching the age of seventeen or *of marriage*.⁴ Consequently, seventeen is also the age one can apply for a driving license and various legal documents. Since 2019, the legal marriageable age has been nineteen for both women and men (the details will be explained below).

When it comes to child protection, there are laws and regulations that reflect the idea of a child that needs protection, but a child’s rights vaporize when they marry and instantly attain the status of adult. For instance, the Law on Human Rights of 1999⁵ defines children as all *unmarried* persons under the age of eighteen and ensures their rights, such as the right to education, to information, and to rest and mix with children of their own age. According to this law, those who are married, regardless of their age, are no longer considered children, so they fall outside its scope of protection. The UN Committee on the Rights of the Child (2007) expresses its concern about this issue, stating that “in some State parties married children are legally

considered adults, even if they are under eighteen, depriving them of all the special protection measures they are entitled to under the Convention.”

The Indonesian government has ratified the Convention on the Rights of the Child (CRC) in 1990, and the Indonesian Child Protection Law of 2002 is clearly inspired by the CRC. The Child Protection Law defines a child as any person under the age of eighteen, and the rights stipulated in the CRC are all reflected through articles in the Child Protection Law. For instance, in line with Article 13 (CRC), Article 10 of the Act ensures the right “to express, and to be listened to about his/her opinion, to receive, seek and give information in line with his/her level of intelligence and age for the sake of his/her development in accordance with appropriateness and decency norms.” The right to education is also stipulated in Articles 48 and 49; however, in contrast to CRC, Article 50 further refers to the focus of education in broader sense, for instance in (a) developing the child’s behavior, personal capacities, talents, and intellectual and physical capacities; (here we omit item (b)) and (c) developing respect for elders, cultural identities, language, and values. Another significant difference is the emphasis on children’s connection with their families and communities. Particularly, Article 19 points out children’s obligations, such as (a) to respect their parents, guardians, and teachers; (b) to love their family and communities, and to care for friends; (c) to love the motherland, country, and nation; (d) to worship in accordance with religious teachings; and (e) to practice ethics and possess noble morals. An emphasis on religion is observed in several articles such as Articles 42 and 43. All the points above suggest that the Child Protection Law, while being inspired by CRC, significantly reflects on communitarianism, as well as strongly fixed morality and values to be respected.

As for the minimum age of marriage, increasing attention in Indonesia on child protection issues from the beginning of this century, combined with international debates on the prevention of child marriage, led to action (Bemmelen and Grijns 2019, 307–308). The 1974 Marriage Law stipulated a minimum age of marriage for women at sixteen and men at nineteen years old. It took forty years to get a judicial review that asked for a higher marriageable age for women. Religious leaders from all faiths agreed at the court with a minimum age of eighteen, or even higher, except for conservative Muslim leaders, who were against a fixed marriageable age. They preferred *baligh* (physical maturity) as the sign that a girl is ready for marriage. So, the age limit of sixteen as stated in the Marriage Law 1974 was acceptable to community and Islamic norms. Raising the minimum age was seen as delaying marriage, which would stimulate sinful extramarital sexual relations. Thus, the first review was rejected by the Constitutional Court (Bemmelen and Grijns 2019, 311).

The second judicial review took until 2019 to finally raise the marriageable age for women from sixteen to nineteen years in the Marriage Law. This time the argument was based on gender equality: for men the minimum age of marriage was already nineteen years old, so it had to be an equal age for women too. An important note since 2019 is that adolescents aged between nineteen and twenty still need the consent of their parents to get married, according to the Marriage Law (Bemmelen and Grijns 2019, 311–312). Further, Article 7 (2) still allows parents of underage parties to petition for a dispensation to the court. This means that, while Article 7 (1) sets a specific minimum age, anyone can marry below that age if the court gives its consent. This dispensation system is inherited from Dutch colonial times. Meanwhile, the Netherlands wiped out dispensation in 2015, when underage marriages were legally banned. Indonesian law continues to allow some leeway and flexibility regarding the legal marriageable age, and dispensation is indeed still used (Grijns and Horii 2018; Horii 2020b).

Local concepts of childhood/adulthood/ transition (religious and cultural)

Following the previous section, which highlighted the global and national concept and standard of childhood, adulthood, and transition, this section turns to the local concepts. Indonesia is an extremely diverse nation with a large number of religions, beliefs, and ethnicities, so local concepts vary depending on the region and the prominent religion of the region. In this chapter, we will examine two examples: Sundanese (Muslim, bilineal) and Balinese (Hindu, patrilineal), based on socio-legal research. For our ethnographic fieldwork we used mixed methods, with both qualitative and quantitative data.

Sundanese

We start with the Sundanese case in rural West Java. Islam and customary *adat*—norms—are there intertwined with varying degrees of stern and mild faith. This has implications for young adolescents who get pushed into adulthood.

In the previous section we looked at *specific* ages in various laws. *Relative age* in Sundanese is a more important social marker, as reflected in the language: Sundanese grammar does not distinguish gender, but it does use different levels of speech, based on generations and social status. Childhood in Sunda does not have a fixed age limit. Toddlers and young kids are allowed

to play as they wish, both for boys and for girls. But around the age of seven, children are believed to really start following Sundanese values. This corresponds with their Islamic tradition (Kodir and Marcoes-Natsir 2022, 109), according to which children from the age of seven start learning the Quran and from the age of nine to begin daily prayers. Gender issues start around the same age, playing an important role in a child's life. This is marked in the division of labor in the household. Girls are more involved in household chores and babysitting; they are kept close to home, whereas boys can still freely play around. Girls are expected to be demure and modest in their behavior, and—very importantly—to remain a virgin till marriage. Their main future role, according to Muslim-Sundanese ideals, is that of mother and wife, while boys are trained to become the providers of their families. Van der Kooij (2016, 39) observed how teenage schoolgirls struggle to combine the ideals of “making their parents happy in life” (as a good daughter) and “continuing education” (as a modern girl).

The next stage of childhood is not marked by a chronological year, but is indicated by the onset of puberty: *baligh*, used for both girls and boys. From being called a child (*budak*), one now becomes a teenager (*rumaja*), getting ready for marriage. For orthodox Muslims, *baligh* is often seen as reason enough for getting married, in particular to preserve the virginity of the bride. *Baligh* can start at the age of nine and is certainly reached by the age of fifteen in orthodox Muslim belief. We mentioned *akil baligh* in our introduction, which indicates both mental *and* physical maturity and is a relative concept of age.⁶ An eldest daughter is often considered to reach this stage earlier than her younger siblings, because she has had a more responsible role in the family (Grijns and Setiawati 2002, 5). The traditional *adat* requirement for a Sundanese marriage was not just the onset of puberty, but needed proof of adult skills. Girls had to be able to weave a good piece of cloth, but by around the 1970s this tradition was abandoned. “Ah, nowadays ...! As long as one can prepare *sambal* (spicy condiment), they now consider you mature enough to marry” (elderly lady in 1986).

Sundanese customs are closely linked to Islam, including *akil baligh*, the main requirement for marriageability and adulthood. The customary transition from child to adulthood, *sungkeman*, still happens a few evenings before *akad nikah*, the religious marriage ceremony.⁷ The bride kneels down in front of her parents for consent and forgiveness from her sins. Her parents then pray for forgiveness and bless her. The same happens with the groom and his parents. After *akad nikah* the couple repeat *sungkeman*, each for their new parents-in-law, a deeply emotional ceremony and farewell to childhood.

From a local perspective, child marriage (under the age of eighteen) is a peculiar term for sixteen- or seventeen-year-olds, since the Sundanese word

for child (*budak*) is reserved for pre-puberty, and marriages under the age of around fifteen are called *nikah dini*, early marriage, but not child marriage. Although early marriage was common a century ago, with girls expecting to marry between the ages of seven and fifteen, it is now no longer so (Bemmelen and Grijns 2018). The emphasis is now on older adolescents, with women starting to get married in greater numbers around the age of seventeen and men around the age of nineteen.

It is clear that both early marriage and child marriage are gendered issues, involving women far more than men (Grijns and Horii 2018). In our case, with a rural setting, which in general brings a higher prevalence of child marriage than in the city, we found a prevalence of child marriage of 23 percent for girls and 1 percent for boys aged twenty to twenty-four whose first marriage took place when they were under eighteen years old. But at the same time, in 2014, 33 percent of the women in this village aged twenty to twenty-four years had never “yet”⁸ been married. And for men of the same age, marriage means a more adult affair with 73 percent never married “yet.”

With a more mobile lifestyle, the ideas of current adolescents on marriage have changed too. On the one hand, there are still girls from orthodox families who marry early to avoid *zina*, the sin of pre-marital sexual relations. Usually, the girl and her parents agree on the marriage and on the choice of spouse, but we are aware of at least three cases of forced marriage (arranged by the parents and forced upon the girl), when we were in the field. On the other hand, dating seems to become a more accepted stage before marriage, with some space for agency of girls.⁹ This is partly because for the current generation, secondary school is important and accessible, while their mothers’ generation had little more than primary school and their grandmothers had hardly any education. Today’s teenagers have more time to develop themselves compared to the older generations. Moreover, they have more mobility, which stimulates love matches, be it via travel outside the village to get to secondary school away from the control of their parents, and/or via mobile phones and social media. But for all adolescents lingers the acute fear of getting accused of *zina*, or even worse, extramarital pregnancy. Instant marriage, with at least the Muslim marriage contract (*akad nikah*), is then their only way out.

While the Sundanese term “child” (*budak*) only has the meaning of not yet having reached puberty, teenagers are in an unclear situation. It is only at marriage that they are considered adults. Previously this space between teenager and adult was only a small period, but nowadays teenagers are more often in the situation of longer-term adolescence, asking for more agency, either for continuing education or getting a paid job. Local customs actually do not care much about the minimum age of marriage but rather

stress the upper limit. Girls who are not married by the age of nineteen or twenty are considered old maids, a disgrace for the girl and her family. Child marriage here has nothing to do with a specific minimum age for marriage; it follows *akil baligh* and avoids *zina*. Marriage itself is the only proof of transition from childhood to adulthood.

Balinese

In the Indonesian island of Bali, the majority of its population embraces the Hindu religion with patrilineal and caste systems. *Adat* communities, ceremonies, and law are important in the lives of Balinese people. Each village has *adat* councils and leaders, which have the ability to generate customary laws and decision-making. Existing *adat* law in Bali contains *awig-awig* and *pararem*, with which sanctions are imposed in the form of reprimands, fines, or warnings for those who commit a crime (Hamida 2022, 4).

In one of the village's *awig-awig*, it is written that marriage is an engagement between a *purusa* (male) and a *pradana* (female), with the condition that both parties are "adults." A professor of *adat* law in Bali, who was also involved in the codification of *awig-awig*, confirmed this and said that "In *awig-awig* I partly made, conditions of marriage are stipulated, such as 'already an adult,' '*suka sama suka* (based on mutual love).'"¹⁰ He continued by specifying when one becomes an "adult":

According to *adat* law, someone is regarded as an adult through his/her physical changes. For a boy this can be seen from the changing in his voice while a girl can be regarded as an adult when she gets her first menstruation. Because in the *adat* law it is not mentioned about the age but only the physical characteristics, to be religiously valid then we should look at the religious text, *Niti Sastra*, on the minimum age for getting married. [...] Based on Hindu's concept in the *Niti Sastra* text, it stipulates that "*taki takining sewaka guna widya*" meaning that the age for pursuing education is from 0 to 19. Then, it is stipulated also that "*semara ruang puluhing yusa*" meaning that the ideal age for falling in love [get married] is 20 years old.¹¹

On the interaction between *adat* and state law regarding the conflicting minimum age for marriage, he said the following:

From legal pluralism perspectives, there is a religious law mentioning the minimum age of marriage while the *adat* law only uses the physical characteristics to define adulthood. In order to prevent the conflict of norms to the state law that also has a different minimum age requirement, those laws need to be integrated. [...] If the physical changes come earlier than the minimum

requirements from the religious law and the state law, this should be resolved on a case-by-case basis. In the case of unwanted pregnancy, it will need an agreement and those underage couples should be brought back to their parents until their age is legally valid to get married so that they do not violate the state law. The position of *adat* law here is actually above the state law or at least equal to the state law so that they will create a conflict of norms.¹²

Indeed, when studying the case of marriage dispensation at a civil court in Bali, the judges justified their reasoning by showing that their decision did not conflict with state law. One judgment writes, “Granting marriage dispensation has been reasoned and is not against state law.”¹³ Another judgment 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.”¹⁴

As well as these codified customary laws, ceremonies are one of the important elements in the implementation of *adat* Hinduism. One important ceremony marking the transition from childhood to adulthood is *Menek Kelih* (also called *Ngeraja Swala* for girls and *Ngeraja singa* for boys). A medical doctor who engages in reproductive health issues for teenagers in Bali explained:

In Bali, there is a religious ritual called “*Menek Kelih*” (being a teenager) for Balinese Hindus to prevent underage marriage. This ritual aims at building awareness for growing up children who are in puberties, especially girls, that they have possibilities to get pregnant because they already had their first menstruation. The ritual is also to pray for God’s protection of the children from negative influences during their growing up process. The value of this ceremony also lies in creating a sense of responsibility for these young adults, as well as strengthening the feeling of brotherhood and solidarity in them.¹⁵

Eiseman (2011) explains that this ceremony is to mark children’s physical and biological changes: the first menstruation of a girl and the deepening of the voice of a boy, and the obvious development of the genitals. The ceremony is considered to raise the moral standards of the teenagers and thus to maintain their family’s righteousness and purity (Eiseman 2011).

Another important ceremony, a sign that someone is an adult, is marked by the teeth-filing (*potong gigi*, *Metatab*) ceremony (Bemmelen and Grijns 2018, 536). The tooth-filing ceremony is one of the obligations of parents to their children which must be carried out after the children reach adulthood (*akil baligh*)¹⁶ (Anshori 2013, 6). The sign for children to be ready for this ceremony, again, is the first menstruation for girls and changed voice for boys. This ceremony is supposed to lead children to *niskala*, which is to live

as adults (Saputra 2018). It symbolizes responsibilities and transition from childhood to adulthood (Fischer and Andarawati 1998, 41). Filing teeth is both a physical and spiritual gesture which is believed to reduce bad traits, leading the person to be “more human” (Fischer and Andarawati 1998, 40). In tradition, parents will give advice that leads to becoming a more mature person (Kinapti 2021).

If these physical changes are the marker for adulthood, Balinese children's adulthood comes rather early. However, when we asked about people's experiences and opinions in Bali, they expressed adulthood in various different ways. For instance, some teenagers expressed in a focus group discussion, “But we are ashamed to buy condom, condom is only for adults!”¹⁷ This shows that for them sexual activities are limited to “adults.”

Many informants mention studying and working as sign that they are becoming adults. Among today's “modern” youth in Bali, finishing education has become the norm, and their aspiration is to finish higher education to get “a good job” (Horii 2021). For example, a mother of a teenage girl who became pregnant said:

The boy's family came to our house to propose marriage, in order to save the status of the baby. But the marriage is purely for the status of the baby, so they will not live together, at least until they become “adult” after studying and working.¹⁸

When I asked what the minimum age for marriage under *adat* law is, a judge at the state civil court said:

According to national law, it's 19 for boys and 16 for girls. According to *adat*, on average (“*rata-rata*”) also 19 and 16. That's the age children become adults.¹⁹

This remark seems to suggest that the state law could also become the norm for how this judge perceives childhood and adulthood.

Elements of “transition”

As this chapter has shown, the global age standards and legislation rely on chronological age, seeming to assume linear definitions of childhood. Such standards might be driven by the “protection”-focused policies concerning children (Horii 2020a), but they risk being dependent on Western legal traditions and traditional psychological development discourse. “Children” are uniformly defined as anybody under the age of eighteen ever since the

enactment of the CRC, despite the fact that the discussion in the drafting process shows that this age specification of eighteen was challenged by several member states (Horii 2019). Such sharp lines imply that the qualities of childhood are universal and monolithic, and they miss out differences in individual development as well as cultural and contextual perspectives. Some recommendations from the international institutions hint at some considerations for “evolving capacity,” but they are rather reluctant in acceptance of the gray zone, as their focus is consistently on “protection.” The global standards also represent a certain vision of childhood, characterized as a state of innocence, in need of protection. Relying on psychological development discourse, the global concept relies on *cognitive development*—when they are *considered* to be capable of rational reasoning; *reasonable* judgments (here, only what is socially accepted as the “right thing” to do (Hanson 2016); and *understanding* the consequences of their actions.

The Indonesian national standards have been influenced by the global standard. The national legislation sets various age limits for different activities, but a child as the subject of protection is defined consistently with the global standard of eighteen. The exception is marriage: in Indonesian standards, married persons are never a “child.” While the Indonesian Child Protection Law is clearly aligned with the CRC, the Law pays special attention to *familial/communal responsibility* and religious moral characteristics of the development of youth. Marriage being an exception for a path to adulthood, reflected in the national legislation, is also indicative of the idea that adulthood is marked by familial and communal responsibility. At the state marriage registration office for Muslims, officials (*penghulu*) give a mandatory lecture for a couple that is planning to get married, where there is a list of what the groom should know, but for the bride the only guidance is “serve your husband,” or as a popular saying goes, “*Sumur, Dapur, Kasur*” (cleaning, cooking, sleeping with your husband) (Grijns et al. 2016, 24).

The local accounts of the transition clarify that marriage is a clear transition from childhood to adulthood. People need to be married to be taken seriously, to be respected, and to start taking social responsibility. That is because adult status is directly associated with familial responsibility, such as cooking, earning a living for the family, and being a father/mother. For instance, an unmarried woman, even if she is an independent university professor, is still considered as a non-adult, seen as a child in the household of her parents.

Gender plays a role in the markers of transitions. Becoming an adult requires acquisition of “adult skills,” which are associated with gender. For girls, these skills include household chores and babysitting, and the norm is to be demure and modest in their behavior and remain a virgin until

marriage. For boys to be men, they are expected to be able to provide *material resources*: being a breadwinner, getting a job, earning a living for the family, being “responsible” as a father and a husband. This suggests that adulthood is marked not only by being married but also by being “a good husband” for boys and being “a good wife” for girls.

In today's Indonesian society, being resourceful also relates to the ideals of being “modern.” Children aspire to continue education as modern youth, while sometimes struggling to combine it with the ideals of being “a good daughter/son” as well as being “a good wife/husband.” Entering adulthood in this sense requires the completion of education and “getting a job.” With the demands of modern industrialized society with prolonged education periods for both girls and boys, it takes longer to become an adult. The higher threshold for “adulthood” explains the development of the concept of “adolescence” or “youth”: these concepts become needed as a transitional period between childhood and adulthood.

Leaving childhood is marked by puberty; in particular, the first nocturnal emission or change in their voice for boys and menstruation for girls. After they reach puberty, they are considered physically mature adults, ready to marry. This *bodily development* is referred to as *baligh*, but to truly and completely become an “adult,” children also need to be mentally mature, referred to as *akil* or mental development. These two elements, combined as *akil baligh*, set the condition for entering adulthood in local contexts. The local Balinese concept in particular also consists of a *spiritual* element: coming of age is marked by religious/customary ceremonies.

Conclusion: evaluation of the global, national, and local standards in light of evolving capacity

One of the most important principles of CRC is “evolving capacity”—and it is in “crisis,” being perhaps the aspiration that has been least achieved or materialized so far. The principle points us to the shades of gray in regard to children's capacity and their accordant rights to decide on what matters for them. Nevertheless, global policies often seem to draw a very sharp line between the “incapable/immature child” and the “capable/known adult”—with a threshold of age eighteen. Various studies and empirical data from Indonesia presented in this chapter demonstrate that there are different ways to conceptualize the line between childhood and adulthood: cognitive development, familial/communal responsibility, material resources, bodily development, mental development, and spirituality. The evaluation of the various standards, in the light of the “evolving capacity” principle, highlights the often-neglected category of “adolescent” or “youth,” the

transitional period, which is increasingly important in the context of the demands from modern industrial societies. The concept of transition is contextual, and regulating children’s activities needs to strike a delicate balance between children’s rights to be protected and the recognition that they also have evolving capacities and should therefore have progressive autonomy in making decisions about their lives.

When it comes to young people’s marriage, “becoming an adult” often is continued after the wedding in cases where the young couple or the young bride with her older spouse did not get much time to prepare for a married life. The old-fashioned *kawin gantung* (suspended marriage) made the young couple stay apart with their own parents till they were mature enough to become a married adult couple and have a baby (Soepomo 1967, 50). But modern child brides and grooms usually move in with one of their parents, because most young couples cannot afford a house for themselves. The brides often still have to learn how to deal with pregnancy and deliver a baby, while being cut off from school and from friends of their own age.

The global “Stop Child Marriage” movement aims to ban and eliminate all marriages under the age of eighteen, setting a clear line between a potentially consensual marriage between capable adults and “forced” marriage, a human rights violation. But when we evaluate the threshold between childhood and adulthood in light of evolving capacity, *akil baligh* in fact is more consistent with the principle as it provides a more flexible standard (as far as it is used for *both* mental and physical capacity). The need for such a flexible standard, especially in a society like Indonesia where marriage is socially required in case of pregnancy (Grijns and Horii 2018, 9–10), is now managed by dispensation at the court or getting an informal wedding outside of the state law scheme. We should of course consider the risk of abusive and harmful cases and ensure that the Rights of the Child and the Marriage Law are able to provide a safety net to prevent forced marriage. What is necessary is to balance the need for protection and autonomy in a system where we can evaluate individual cases for both genders and where we look at agency and choice, versus the wider context of political economy, cultural/religious norms, and accessible and applicable education (including sexual and reproductive health education), in order to open up options for adolescents to choose not to marry just yet.

Notes

- 1 *Akil baligh* is a term from Islam. Because of the large Muslim majority in Indonesia, this word is often used, but in regions with other religions, other terms are also used.

- 2 See for instance Varadan (2019) for a detailed interpretation of the principle of evolving capacity.
- 3 Law No. 11 of 2012 on The Juvenile Criminal Justice System (Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak).
- 4 Law No. 23 of 2006 on Administration of the Populace (Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan).
- 5 Law No. 39 of 1999 on Human Rights (Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia).
- 6 Muslim law, *Fikih*, does not mention a specific age for signs of adulthood: there are views of fifteen years, eighteen years, and even nineteen years, both for men and women. But there are also views which differ between men and women, such as eighteen years for men and seventeen years for women, or nineteen years for men and seventeen years for women (Kodir and Marcoes-Natsir 2022, 108–110).
- 7 The Marriage Law 1974 Art. 2 shows that the religious part of the marriage is always first, before the marriage registration.
- 8 Meaning not “yet” married comes from the norm that everyone should get married, whether it is early or late.
- 9 Grijns et al. (2016) mention two more types of child marriage: marriages to escape home because of extreme poverty or domestic violence and marriage of “social orphans” who have been neglected by (divorced, migrated, disappeared) parents and their community.
- 10 Interview with Sudiana, professor of *adat* law, Denpasar, May 25, 2017.
- 11 Interview with Sudiana, professor of *adat* law, Denpasar, May 25, 2017.
- 12 Interview with Sudiana, professor of *adat* law, Denpasar, May 25, 2017.
- 13 Dispensation case from Civil Court Bangli, judged in 2016 (13/Pdt.P/2016/PN.Bli).
- 14 Dispensation case from Civil Court Bangli, judged in 2016 (7/Pdt.P/2016/PN.Bli).
- 15 Interview with a medical doctor and professor at local university, Denpasar, April 14, 2017.
- 16 This is also a term and concept commonly used in Bali. Interview with local legal aid association staffs, Denpasar, August 5, 2022.
- 17 Focus group discussion with teenagers, Denpasar, July 8, 2017.
- 18 Interview in Denpasar, July 4, 2017.
- 19 Interview with a judge in Civil Court Semerapura, Semerapura, July 13, 2017.

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