



# LEGAL PLURALISM IN HISTORICAL CONTEXT & CHILD MARRIAGE

**Sulistiyowati Irianto**

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# The need to understand LP

- ◆ Before 19<sup>th</sup> century: LP was perceived as evolution phenomena (law develops from the simple - to complex form )→ evolutionist
- ◆ After 19<sup>th</sup> century: LP has been conceived as pluralistic normative systems
- ◆ To answer the legacy of legal centralism (state law is the only law )--> Legal centralism is a myth & LP is a fact (Griffiths, 1986)
- ◆ To explain situation in post-colonial era when there were co-existing of the state law (colonial transplanted law) and people's law ( religious- & adat law) in many independent countries

# What is LP ? (in classical term )

- ◆ Legal pluralism as a concept is changing over time
- ◆ Traditionally LP was defined as co-existence among the state law and people's law (customary-, religious law, social consensus ) in certain social arena

# ...Classical term

- ◆ What did the researcher do ?
- ◆ Mapping of legal universe
- ◆ Law is perceived as entity with obvious border
- ◆ Sharp dichotomy between the state law & people' s law

# New Approach of LP (late 20<sup>th</sup> century)

The “old” approach falls into question:

- ◆ → there can be no map of law (Woodman, 2010)
- ◆ How does globalization in economic, politics, relate to globalization of law ?

General picture of LP:

- ◆ Multiple uncoordinated, co-existing or overlapping bodies of law & diversity.
- ◆ Competing claim of authority, conflicting demands or norms, different styles and orientations (Tamanaha, 2008)

# Globalization of Law

- ◆ Globalization leads to borderless state & borderless law
- ◆ International\_ & transnational law penetrate state\_ & local' s boundaries
- ◆ or vice versa: Local law and local values are adopted partly or fully to international standard: alternative dispute resolution (*borrowing modes of dispute resolution*), CEDAW Convention Art 14
- ◆ The most affected subject is humanitarian field through the promotion of “democracy”, “*rule of law*”, “*trans- national accountability*”, “*abolishment of child marriage*”, etc

# “recent” definition of LP

- ◆ *...it is mainly understood as the coexistence of state, international and transnational law, and analysis remain limited to the question of whether such transnational connection influence state law at the national level (Benda-Beckmann, F & K, Griffiths, 2005: 6)*
- ◆ The dead of mapping of legal universe

# Child marriage : the state law pluralism

Who is child ?

- Marriage Act 1/1974: the minimum legal age of marriage for girls is 16 & 18<sup>th</sup> for boys
- Act on the Protection of the child: 18<sup>th</sup>
- The Traffic regulation: 17<sup>th</sup>

# Adat law ?

## 13 year old village girl in Bali

- *The marriage of a pregnant 13-year-old village girl to a 39-year-old father of two in Bali has been met with reactions ranging from disgust to thinly veiled approval by the island's scholars, activists and religious leaders.*
- *According the police, the child bride was still in the fifth grade in Jehem, Bangli, in 2012 when I Wayan Cidra said that he loved her. Cidra, however, was already married with two sons. His oldest was the same age as the girl. The girl accepted Cidra's advances, and told police that she, too, had fallen in love.*
- *When the girl became pregnant, Cidra asked her family to marry the girl. The pair were married on Jan. 23 in a Balinese Hindu ceremony witnessed by the extended families of the girl and Cidra and Jehem customary village chief Made Widana.*

# JR at Constitutional Court on minimum age for marriage for female

- Judicial review: challenging the minimum age for women to marry in Marriage Law 1/1974.
- Several women & child rights groups campaigners are demanding the court to raise the legal minimum age for marriage from 16 to 18 years for females.
- The request is aimed at reducing the number of underage marriages, which is one of the highest in the world and is the second-highest in ASEAN after Cambodia.

# Religious leaders

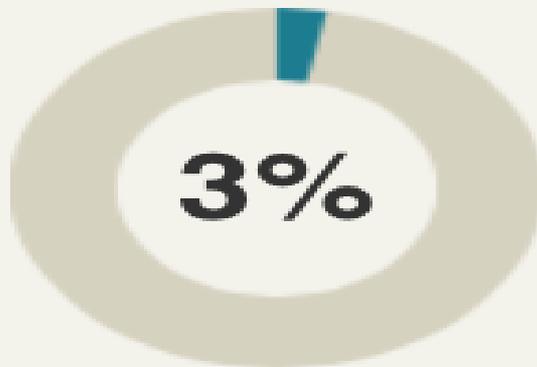
- **MUI** : *“The provision on the minimum age of 16 is consistent with Islamic teachings,”* ( Amidhan Shaberah, MUI)
- **NU**: The current provision in the Marriage Law gave protection to children *“Marriage before adulthood is allowed by some [Muslim] scholars, but [they] prohibit sexual intercourse [outside wedlock] for minors,”*. *“Raising the minimum age is similar to delaying marriage, while marriage is in fact a solution to preventing free sex* (Ahmad Isomuddin, NU)
- **Muhammadiyah**: *A passage in the Koran that said those who were considered mature enough to get married were those who already had the urge to raise a family*

# Religious leaders

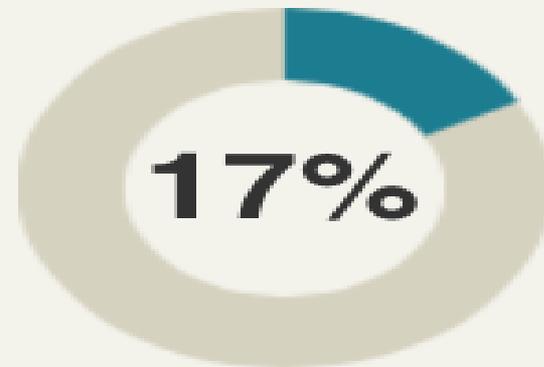
- **Hindu:** The Indonesian Hindu Religious Council (PHDI), presented an argument supporting the petitioners. The PHDI argued that Hinduism considered adults as those who were mentally and physically mature. *“Having said that, the most appropriate age for a woman to get married is 18,”* (I Nengah Dana, PHDI)
- **Confucianism:** *“We are not in a position to support or reject it since we consider that the most important issue here is that we should obey the law and adapt religious teachings based on the regulation,”* (Djaengrana Ongawijaya, The High Council of Confucianism in Indonesia -- Matakina)
- A number of expert witnesses presented to the court by the petitioners, including a gynecologist, a pediatric, a psychologist and noted Muslim cleric Quraish Shihab, backed the proposal that 18 was the ideal minimum age for a female to get married.

# Indonesian picture

**UNICEF 2015 %  
MARRIED BY 15**



**UNICEF 2015 %  
MARRIED BY 18**



\*Child marriage prevalence is the percentage of women 20-24 years old who were married or in union before they were 18 years old

# Indonesian picture:

- 2010: Basic Health Research in Indonesia, the number of early marriages (15 to 19 years old) is 46.7 per cent. In addition, marriages in the age group of 10 to 14 years old, are five per cent \*
- 2012: the Indonesian Demographic and Health Survey: number of births during adolescence (15 to 19 years old) is 48 per 1,000 births.
- 2015: An estimated one in every five girls in Indonesia is married before the age of 18. Due to its population size, Indonesia is among the ten countries with the highest absolute number of child brides \* \*

# Child marriage & maternal mortality

- 2012: the Indonesian Demographic and Health Survey also showed maternal mortality rate was 359 per 100,000 live births, while infant mortality rate was at 32 per 1,000 live births
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# ...Mortality rate...

- The Indonesian National Population and Family Planning Board (Mr Fasli Jalal ): 4.5 million babies born each year in Indonesia who comes from 2.3 million of early marriage couples
- Maternal mortality caused by bleeding during delivery is at 32 per cent, followed by hypertension at 28 per cent, while infection is at the rate of five per cent.
- In 2013, there were 5.019 maternal deaths recorded due to pregnancy and childbirth in Indonesia. While according to the Indonesian Demographic and Health Survey in 2012, there were 160.681 recorded deaths on babies.

# Poor nutrition

- 2013 Basic health research: showed that the percentage of population aged 15 to 24 years old who suffered from anemia is at the rate of 18.4 per cent .
- Fasli Jalal: although pregnancies in women older than 20 years old who are considered mature enough, will deliver malnourished babies, weighing under 2500 grams with disrupted brain development, as a result of nutritional problems during pregnancy.
- Infants coming from poorly nourished mothers will have disrupted cognitive and immune functions later in life.

# *Methodological Implications*

- ◆ The important subject of study:
- ◆ Global chain interaction among actors from transnational, national and local level, who are doing negotiation in multi-sited arena
- ◆ Power relations embedded
- ◆ How power relations construct interaction, and how interaction is reproduced and reshaped by the actors
- ◆ The emergence of *multi spatial, multi-sited ethnography*

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- ◆ The death of conventional ethnography (micro-local study, centred in one research site, and limited by spatial geography)
- ◆ Observing people beyond their "face-to face" relations, but observing them within their connection with cyber, global consumption, changing geo-political configurations, etc (Benda-Beckmann, et.al 2005).

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- ◆ It is significant to show the connection between the global/national context with micro level phenomenon, relations between the state and individual (SF Moore 1994 )
- ◆ It is recommended to connect spatial and temporal dimension of globalization of law, and tracing back the emerging and developing impact from transnational law to smaller social arena (Benda-Beckmann, et.al, 2005: 9)

# Conclusion: How to read Legal Pluralism ?

- ◆ Contesting, competing legal norms, but also reproduction, hybrid, absorption, adoption of legal norms
- ◆ Many of legal instruments in the field of humanitarian in Indonesia adopt concepts introduced by int'l treaties like “human rights”, “(domestic) violence”, “trafficking”, “corruption”, “good governance”, **perhaps “child marriage”**

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- ◆ It is believed that law plays important role in globalization, as it is connected with socio-politic, and economic domain. It can be studied how does law become power in force in defining political & economic interest in the relations among societies and nations
- ◆ Law is powerful as it constructs almost everything in our life, determines who we are in our relations with others, categorizes our behavior as right or wrong
- ◆ There is actors who drive the mobile law. They are agent of the changing law –**the petitioner, the child rights campaigners, scholars, judges**



THANK YOU