

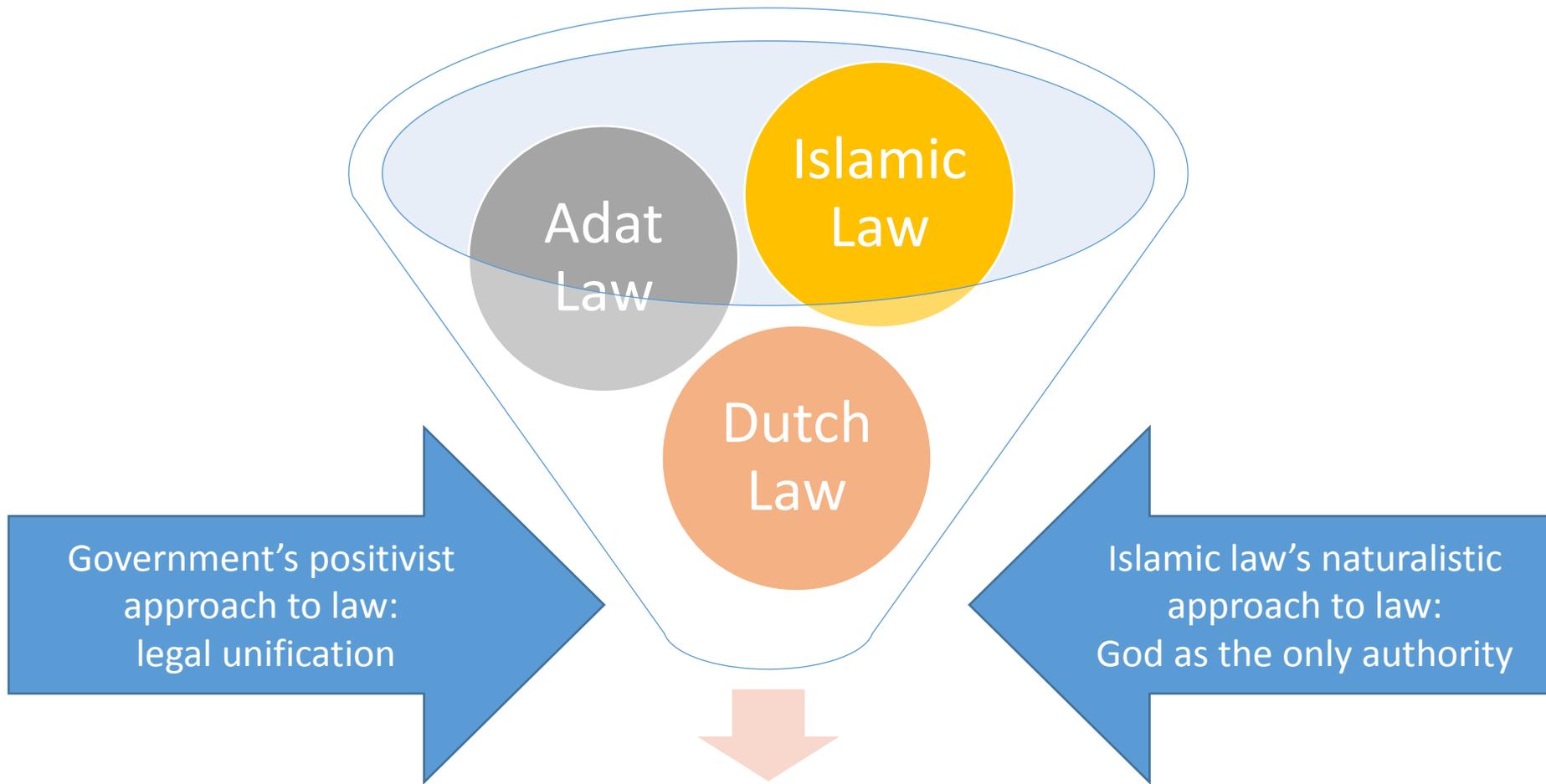
Mapping child marriage  
norms in pluralistic Legal  
system in Indonesia:  
Marriage dispensation in  
religious courts in Cianjur,  
Sukabumi and Cibadak

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# Outline

- Legal Pluralism and Indonesian Legal System
- Overview of Pluralistic Indonesian Legal System
- Child Marriage Norms in Each Legal System
- Results and Analysis of My Fieldwork: Interviews and Court Decisions
- Conclusion

# Legal Pluralism and Indonesian Legal System



Pluralistic Indonesian Legal System

# Pluralistic Legal System of Indonesia

International Law

State Law

Religious Law

Adat Law

# International Law

- **The Convention on the Elimination of All Forms of Discrimination against Women(CEDAW)**

Article 16 (2) “The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.”

Article 16(1) (b) women shall have the same right as men “freely to choose a spouse and to enter into marriage only with their free and full consent.”

- **The Convention on the Rights of the Child(CRC)**

Article 1 clarify the definition of child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”

UN Committee on the Rights of the Child recommends all States Parties to enact laws to set up minimum age of marriage at 18.

(Committee on the Rights of the Child, “General comment No. 4 (2003), Adolescent health and development in the context of the Convention on the Rights of the Child,” CRC/GC/2003/4)

# Religious Law

- **Quran Letter *An Nur* Para 32**

"And marry the unmarried among you and the righteous among your male slaves and female slaves. If they should be poor, Allah will enrich them from His bounty, and Allah is all-Encompassing and Knowing."

- **Hadith al-Bukhari**

"O youthful people, if any of you have the means to, he should get married, as it lowers the eyesight and protects the private parts. Those who have not the ability to do so should fast, as it will be a shield for him."

- **Hadith Bukhari, Book 62, Volume 7, Book 62, Number 64**

"Narrated 'Aisha: that the Prophet married her when she was six years old and he consummated his marriage when she was nine years old, and then she remained with him for nine years (i.e., till his death)."

# Religious Law

<b>Maddhab</b>	<b>Girls</b>	<b>Boys</b>
Shafi'i	15	15
Hanbali	15	15
Hanafi	9	12
Maliki	17	17

(Minimum age to reach puberty, depending on each Maddhab)

# State Law

- **Marriage Law 1974**

Article 6(2) “Marriage of a person under the age of 21 years shall require the consent of both parents.”

Article 7(1) “A marriage is only allowed when the male marriage candidate has reached the age of 19 years and the female marriage candidate the age of 16.”

Article 7(2) “In deviation from the provision in paragraph (1) of this article, dispensation may be petitioned to the Court or other authority designed by the parents of both the male and female marriage candidate.”

- **Child Protection Law**

Article 1(1) “A ‘Child’ shall mean a person under eighteen years of age, including unborn.”

Article 9(1) “Every child shall have the right to an education and training in the context of his personal and intellectual development based upon his interests and talents.”

Article 26(1) “Parents shall be responsible and accountable for: c. Preventing underage marriages.”

- **Kompilasi Hukum Islam**

Article 15 on the marriage age follows the Article 6(2) and Article 7(1) of the Marriage Law 1974. Article 8 of KHI forbids the Marriage Registration Officer to implement or aid in the implementation of an illegitimate marriage under the Marriage Law 1974. 8

# Adat Law

- ***akil baliq***

People marry only when they are physically and emotionally mature.

- ***kawin gantung***

Young children at the age of nine or ten enter an Islamic marriage, with the understanding that the marriage would not be consummated until the girl shows “a euphemism for menstruation.”

(Susan Blackburn and Sharon Bessell, “Marriageable Age: Political Debates on Early Marriage in Twentieth-Century Indonesia,” *Indonesia* no. 63 (April 1, 1997))

# Child Marriage Norms in Each Legal System

	Girls	Boys
International Law (CEDAW, CRC, The Convention on Consent to Marriage)	18	18
State Law (Marriage Law, Child Protection Law, Compilation of Islamic Law)	16 + exception	19 + exception
Islamic Law (quran, hadith, fiqh)	9 ~ 17	12 ~ 17
Adat Law in West Java	“akil baliq”	“akil baliq”

# Fieldwork

- Interviews in a village in West Java
- Interviews with housemaids in Jakarta
- **Interviews in religious courts in Cianjur, Sukabumi, and Cibadak**
- **Analysis on court decisions in religious courts in those three area**



("wikitravel", West Java) <sup>11</sup>

# Application of Child Marriage Norms in Religious Courts

	Wife Candidate	Husband Candidate	Reasons
A	15 years & 4 month old	23 years old	<i>Zinah</i> Candidates' strong will to marry Families' agreement
B	19 years old	18 years & 6 month old	<i>Zinah</i> Mutual love Families' agreement
C	19 years old	17 years old	<i>Zinah</i> <i>Akil baliq</i> Pregnancy (2 month)
D	15 years & 11 month old	39 years old	<i>Zinah</i> <i>Akil baliq</i> Families' agreement
E	15 years old	25 years old	<i>Zinah</i> Mutual Love Maturity to marriage
F	23 years old	18 years old	<i>Zinah</i>

# Application of Child Marriage Norms in Religious Courts

	State Law	Islamic Law	Adat Law
A	Marriage Law 1974, A7(1)(2)	madharat, mafsadat, kemaslahatan	
B	Marriage Law 1974, A7 KHI A15(1)	<i>kemaslahatan</i>	
C	Marriage Law 1974 A7(2) KHI A15(1)	Quran Letter An Nur Para 32 Hadith "O youthful people ~"	<i>"akil baliq"</i>
D	Marriage Law 1974 A7(2) KHI A15(1)		<i>"akil baliq"</i>
E	Marriage Law 1974 A7(1) (2), KHI A15(1) A8 Marriage law 1974 & KHI A39 A6 marriage law 1974 & KHI A16	<i>kemaslahatan</i>	
F	Marriage Law 1974 A7(1) A8 KHI A14 Government regulation No.9 1975, A3	Hadith: "Oh youthful people~" According to Islamic law, people who will marry need to meet these requirements: 1) Believe in Islam, 2) Reach "puberty", 3) Rational, 4) physically and spiritually healthy, 5) Having physical and ability to give livings for bride, to the bride	

# Conclusion

## National Level

- The government tries to accommodate the needs from each legal order while trying to establish the unified state legal system and reforming marital issues to comply with international standard.
- The government thus has established the state system which allows judges in religious courts to apply multiple legal orders in making court decisions.

## Judiciary Level

- Judges use the legal orders most suited to their case at the judiciary level: that is, those more suited to their social and cultural setting, so that they accommodate the local needs arising from applicants' communities.



At each level, these mechanisms allow legal standards in Indonesia to be deviated from the international human rights standards. This resulted in the difficulty of implementation therefore continuation of the practice of child marriage.