



Comparison Of The Customary Legal System And The National Legal System: The Case Of Arrested Marriage In Sumba, East Nusa Tenggara

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Abstract This research aims to analyze the comparison between the Customary Legal System and the National Legal System in the context of legal practice related to arrest marriage cases in Sumba, East Nusa Tenggara. The main focus of this research is to understand how these two legal systems interact and influence each other, especially in handling cases of arrested marriages involving the people of Sumba. The Customary Law System in Sumba has unique and traditional norms relating to captive marriages, which often differ from the norms found in the national legal system. This gap creates challenges in enforcing the law and protecting individual rights, especially for the women involved in the cases. This study contributes to our understanding of the complex dynamics between the Customary Legal System and the National Legal System in Indonesia, by providing in-depth insight into the implementation of the law in the context of arrest marriage cases. The implications of this research can be used as a basis for revising or developing legal policies that are more inclusive and just at the local and national levels.

Keywords: Comparison of Legal Systems, Customary Law, National Law, Arrest Marriage

Abstrak Penelitian ini bertujuan untuk menganalisis perbandingan Sistem Hukum Adat dengan Sistem Hukum Nasional dalam konteks praktik hukum terkait kasus perkawinan penangkapan di Sumba, Nusa Tenggara Timur. Fokus utama penelitian ini adalah untuk memahami bagaimana kedua sistem hukum ini saling berinteraksi dan mempengaruhi, khususnya dalam penanganan kasus kawin tangkap yang melibatkan masyarakat Sumba. Sistem Hukum Adat di Sumba mempunyai norma-norma yang unik dan tradisional terkait dengan perkawinan tawanan, yang seringkali berbeda dengan norma-norma yang terdapat dalam sistem hukum nasional. Kesenjangan ini menimbulkan tantangan dalam penegakan hukum dan perlindungan hak-hak individu, terutama bagi perempuan yang terlibat dalam kasus tersebut. Kajian ini turut memberikan pemahaman kita terhadap dinamika kompleks antara Sistem Hukum Adat dan Sistem Hukum Nasional di Indonesia, dengan memberikan wawasan mendalam mengenai implementasi hukum dalam konteks kasus perkawinan penangkapan. Implikasi dari penelitian ini dapat dijadikan dasar untuk merevisi atau mengembangkan kebijakan hukum yang lebih inklusif dan berkeadilan di tingkat lokal dan nasional.

Kata Kunci: Perbandingan Sistem Hukum, Hukum Adat, Hukum Nasional, Kawin Tangkap

INTRODUCTION

Marriage is one of the rights possessed by every human being as regulated in Article 28 B paragraph (1) of the 1945 Constitution of the Republic of Indonesia or the 1945 Constitution which states that every person has the right to form his own family and continue his descendants within a legal marriage bond. Article 10 Paragraph (1) of Law Number 39 of 1999 concerning Human Rights states that the right to form a family and continue offspring within a legal marriage bond and a valid marriage is a marriage that is conducted. (Thontowi, 2014)

A valid marriage, apart from having to be carried out according to their respective religions/beliefs, must also be based on the applicable law by fulfilling the marriage requirements, namely, those stated in Article 6 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 2019 1974 concerning Marriage. One of the marriage

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conditions that must be fulfilled based on the provisions of Article 6 paragraph (1) is that there must be the consent of both prospective bride and groom based on the marriage, but in reality, currently, there are still marriages that are carried out without the consent of the prospective bride and groom, as is the case in the practice of Arrest Marriage on Sumba Island, East Nusa Tenggara Province. (Sudibya, 2021)

In the Sumba traditional community, there is a custom or practice in the marriage process called Kawin Tangkap which is a rough translation of marriage practices that deviate from the actual traditional practice, namely "Yappa Mawinni" (in the Central Sumba regional language). This customary marriage practice is carried out by arresting or forcibly bringing the woman you want to marry while in her house, market, public street, or other crowded place, without any previous love or "willingness" relationship, to show the man's virility at the expense of women's bodies and selves. When the man succeeds in bringing the woman to his residence, the woman will be tied up and held in a room so that she cannot escape, and it is not uncommon for the woman to be directly fucked at that time. The consequences of the practice of Marriage Capture are not only physical violence but also sexual violence against women who are victims. (Lindha Pradhipti Oktarina, 2015)

The people of Sumba adhere to their traditional and cultural traditions so in efforts to resolve the practice of Marriage Capture, to this day it is still enforced according to custom. The victim's family tends to prefer to resolve Captive Marriage problems using traditional methods, while the victim himself feels it is unfair to ask the authorities for help to resolve them using positive law so that it is not uncommon for there to be a conflict of norms between positive law and customs in efforts to resolve Captive Marriage cases. Women are placed as the weakest party in this marriage practice, the most disadvantaged, and their voices are not heard. Victims of Captive Marriage, if we look further, not only experience physical and sexual violence but also experience psychological violence due to pressure from various parties, as well as from unsupportive circumstances. (Soekanto, 2020)

So, it is an interesting thing to research regarding how to resolve the practice of captive marriage on Sumba Island by considering aspects of legal protection for victims and how the comparison of customary criminal sanctions related to sexual violence experienced by victims is regulated in Sumba customary law and national law in Indonesia.

METHODOLOGY

The research adopts a normative-empirical legal research method with a statutory and case study approach. A normative approach is used to analyze aspects of legislation related to

the Customary Legal System and the National Legal System relating to cases of arrested marriages in Sumba, East Nusa Tenggara. The analysis involves an in-depth review of relevant legal provisions and an understanding of applicable legal concepts. Meanwhile, an empirical approach is implemented through case studies by conducting interviews with traditional law figures and representatives of national legal institutions in the region. By combining these two approaches, research can provide a holistic understanding of legal practice and the dynamics of interaction between the Customary Legal System and the National Legal System in handling specific cases of arrested marriages in the local context.

RESULTS AND DISCUSSION

Legal Protection for Women as Victims of Sexual Crimes in Legislation

The Criminal Code (KUHP) includes regulations regarding criminal acts of violence but does not specifically regulate violence against women. The formulations contained in the Criminal Code are mostly general in nature where the victims can be men/women or children/adults, and are limited to physical violence only. (Mardani, 2021) In contrast to crimes in general, in criminal acts of gender-based violence against women, the situation and conditions of women as victims and perpetrators are such that the perpetrators take advantage of the victims to fulfill their interests and desires and even legitimize their crimes based on certain motivations and rationalizations. The TPKS Law, which was passed in 2022, is a special regulation that regulates sexual violence. In Article 4 paragraphs (1) and (2) of the TPKS Law, there are 19 (nineteen) types of sexual violence which are regulated along with criminal sanctions for perpetrators based on the type of sexual violence committed. (Zayanti, 2014)

Sexual violence is any act of degrading, insulting, attacking, and/or other acts against the body related to sexual desire, a person's sexual desire, and/or reproductive function, by force, against a person's will, and/or other acts that cause a person to is unable to give consent in a state of freedom, due to unequal power relations, gender relations and/or other reasons, which results in or could result in physical, psychological, sexual suffering or suffering, economic, social, cultural and/or political losses. (Indonesian Justice Monitoring Society, 2015). Article 1 number 1 of the TPKS Law defines criminal acts of sexual violence as all acts that fulfill the elements of a criminal act as regulated in this law and other acts of sexual violence as regulated in law to the extent specified in this law.

Apart from the TPKS Law, sexual violence is also regulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Article 76C states that every person is prohibited from placing, allowing, carrying out, ordering to

commit, or participating in violence against children. Article 76D: Every person is prohibited from using violence or threats of violence to force a child to have sexual intercourse with him or another person. Article 76E: Everyone is prohibited from perpetrating violence or threatening violence, forcing, deceiving, committing a series of lies, or persuading a child to commit or allow obscene acts to be committed. If these provisions are violated, sanctions will be imposed. Provisions regarding sanctions are regulated in Article 80 paragraph (1) every individual who violates the provisions as intended in Article 76C, shall be punished with imprisonment for a maximum of 3 (three) years and 6 (six) months and/or a fine of a maximum of IDR 72,000,000.00 (seventy-two million rupiah). Similarly, in Article 81 paragraph (1) and Article 82 paragraph (1), if someone violates the provisions as stipulated in 76D and 76E, they will be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah). If the criminal act as intended in the three articles is committed by a parent, guardian, child caretaker, educator, or scholarly staff, the penalty is increased by 1/3 (one-third) of the criminal threat as intended in paragraph (1). (Asmin, 2016)

Other provisions that also regulate sexual violence are contained in Law Number 23 of 2004 concerning the Elimination of Domestic Violence, hereinafter referred to as the PKDRT Law. Article 5 of the PKDRT Law divides forms of domestic violence into 4 types, namely physical violence, psychological violence, sexual violence, and household negligence. Captive marriage in practice does not only use violence in the initial process but also extends to the domestic life of the victim who cannot escape and is forced to be bound by a marriage relationship. Sexual violence in the household as a result of the practice of Capture Marriage often occurs in several cases, because one of the aims of Capture Marriage itself is so that the man can immediately obtain offspring who can continue his clan. Women who are victims of Captive Marriage and must be bound in a marital relationship will ultimately always be dominated by their husbands and treated like property because the husband previously succeeded in showing his masculinity by forcibly carrying the victim in this practice of Captive Marriage. In the end, Marriage Capture not only has a traumatic effect by using physical violence in the process, but the victims also receive psychological violence and sexual violence in the household. (Lestari, 2015)

Legal Protection for Women as Victims of Sexual Crimes in Sumba Customary Law

The term Kawin Capture in the Sumbanese language is Yappa Mawinni (regional language of Central Sumba Regency) which means catch a woman, then Piti Maranggangu (regional language of East Sumba Regency), which means take in a meeting. The term Capture

Marriage refers to the man making a plan to run away from the prospective bride with the help of one of the woman's family members who supports the marriage. The prospective bride was picked up in the middle of the street and taken to her future husband's house. Having an animal such as a horse tied in front of the house, or valuables such as gold kept under a pillow is a traditional sign for men that the marriage process is in progress. The man's actions in this practice are not considered contrary to custom because his actions show his identity as a brave man, who accepts the challenge of the woman's parents by paying a high *belis* (dowry). (Syaputra, 2016)

In practice, what happened in ancient times, Captive Marriages that occurred in Sumba could be based on men and women who mutually wanted to form a family but the woman's father did not agree, or it could also be that the woman did not agree to be married to a man who she doesn't love but his family agrees. Arrest marriage, in practice in the current era, is often only based on the will of one party, namely the groom. In one case that occurred in 2017, a woman who was a victim of Arrest Marriage said that she was forcibly taken by a group of people she did not know when she wanted to go to her workplace. The victim said he continued to struggle, screamed for help and even hurt himself, but the perpetrator didn't care and continued to take the victim to the perpetrator's residence. When they arrived at their destination, the family of the perpetrator (the man who kidnapped the victim to marry) had prepared all the necessary marriage rituals based on applicable customs. Fortunately, on the way, the victim asked his family for help via a short message, and in the end, she was rescued by the police six days after the kidnapping. (Doko, 2021)

The Sumbanese people in their culture highly value the sense of family where family is one of the crucial elements taught in Marapu (the original beliefs of the Sumbanese tribe) so that in any problem they will always try to resolve it first in a traditional/familial way. The traditional tradition in Sumba itself does not regulate sanctions that cause physical pain or the removal of the rights of criminals, but only in the form of payment of customary fines because what is prioritized is a sense of kinship. Community sanctions in Sumba are generally the same in each district, the difference is the amount of the fine that must be paid by the perpetrator. If through customary channels it cannot be reconciled or resolved, the parties will use positive legal channels. In traditional traditions in Sumba, there is no distinction between the forms and subjects of legal protection, all parties are considered to have the same position and have the same opportunity to express their opinions. In the customary settlement process, when both families in the dispute sit on the customary mat, a solution will be sought together where the guilty party will admit their mistake and be ready to pay the customary fine, the amount of

which will be determined together with the Wunang (traditional leader) and the victim's family. After the traditional process, the two families were then reconciled and the payment of the customary fine also showed that both parties were family and there would be no more feelings of anger or resentment in the future. (Ati, 2021)

Fair Dispute Resolution in Arrested Marriage Cases in Sumba

The act of forcibly taking a potential spouse has come under scrutiny by various groups, particularly from a human rights standpoint. In the Sumbanese language, "marriage capture" is referred to as Yappa Mawinni in the Central Sumba dialect, which translates to "capturing women," and Piti Maranggangu in the East Sumba dialect, meaning "taking time in a meeting." The local language of East Sumba also includes the phrase "Piti Rambangu," which describes the act of taking someone by force. This tradition involves a male individual enlisting the help of a female family member to assist a prospective bride in running away and taking her to her future husband's home. Aspects such as horses tied in the yard or gold jewelry under the pillow demonstrate the cultural significance of various stages of marriage. However, this practice has recently come under scrutiny for its perceived disregard of human rights principles. (Hilman, 2023)

It is understandable if a woman is captured by a group of individuals and invited involuntarily to her prospective husband's residence for the wedding to take place. Even though women rebelled, screamed, and cried, these actions were still carried out based on the same argument, namely traditional marriage which has been going on for generations. From these instructions, it can be revealed that in the current situation, it can be concluded that this act of "arrest marriage" insults human rights principles. However, it is also important to consider whether the "arrest marriage" violates human rights authority or whether its actual implementation deviates from procedures that have been in force in the past. (Kapita, 2016)

The practice of "arrest marriage" is an action that revokes an individual's human rights if carried out through coercion and violence. Moreover, there are indications that the customs of today have changed from the original customs and are no longer by the objectives and proper execution process. Then, by conveying a written position from the Marapu indigenous community in Tarung village stating that "arrest marriage" with violence is an abuse of custom. This statement is also based on the wise philosophy of the Sumbanese people which depicts women (mawinne) as a symbol of the feminine body part (mamuli), which has the meaning of being a gateway to the womb and a representation of female affection. Moreover, women are considered to be quite vital subjects in the context of regional development. Therefore, in all

forms of marriage, elements of violence or coercion that are often experienced by women should be prohibited. (Sukadana, 2021)

Concerning the case of "arrested marriage," the Ministry of Women's Empowerment and Child Protection (KemenPPPA) took a serious stance regarding the alleged marriage situation that occurred in the Southwest Sumba Region, East Nusa Tenggara (NTT) on Thursday, September 7, 2023. "This kind of incident violates women's rights to live a life free from violence and safety. Captive marriage incidents are a point of friction in an aspect of culture that we should stop together, to protect women from sexual violence that is hidden in that culture. Captive marriage is the act of kidnapping and committing violence against women. Certainly, this can be considered an illegal act and is not part of the tradition. "Apart from that, there is a role of power relations in the captured-marriage situation which should not be maintained," said Deputy for Protection of Women's Authority at the Ministry of PPPA, Ratna Susianawati, in the city of Jakarta, on Saturday, September 9, 2023.

Komnas Perempuan considers that the practice of forced marriage is rooted in gender-based discrimination against women. In patriarchal cultures where women are often placed in inferior positions, women's consent regarding marriage is often ignored. Women are considered objects at stake, where the actions of "capture" and "rescue" are symbols of competing masculinities on both sides. The woman who failed to escape from captivity could not negotiate but was driven to enter into a marriage that she did not initially want. This situation can cause women who are victims to be trapped in a cycle of violence within the household, including physical, mental, and sexual violence.

To prevent and eliminate "captive marriage", in this case, the National Commission on Violence Against Women recommends several things in an effort to resolve the practice of captured marriage, namely as follows: (Aini, 2017)

1. Every party involved directly or indirectly in this issue must comply with Constitutional principles and the structure of Human Rights. These parties are expected to respect and realize the basic aspects of the principle of non-discrimination, including preventing stigmatization of certain segments of society, especially certain traditional or ethnic neighborhoods.
2. Traditional heads and local religious leaders, together with government agencies and civil society, facilitate a forum for dialogue to encourage improvements in the realization of cultural principles and customs in protecting women in the family environment and the purpose of marriage. In this dialogue, it is vital to ensure active women's participation, especially by listening to the aspirations of women who are victims and accommodating

the voices of women's groups with traditional, and religious backgrounds, as well as companions for women who experience violence.

3. A thorough investigation into the practice of "captive marriage" is carried out with institutions at the national level across institutions, with a focus on constitutional authority, to understand and overcome the complexity of the origins of this issue and the impacts it causes.
4. The Provincial Government and DPRD in the East Nusa Tenggara Province region, collaboratively and transparently take a comprehensive process, not only related to making rules and policies. This stage is intended to prevent the practice of marriages occurring without consent and provide recovery assistance to women who are victims.
5. The Ministry of Women's Empowerment and Child Protection (DPPPA) is collaborating with relevant Ministries and Institutions, both nationally and locally, to ensure that quality recovery services are available for women who are victims of captive marriage practices as well as increasing efforts in the public education sector to promote gender equality and prevent all forms of discrimination, including the practice of captive marriage.
6. The Police of the Republic of Indonesia, especially in the NTT Province area, takes special action in providing protection for women from activities to revoke their independence as well as taking legal regulatory action regarding individuals who carry out arrested marriages.
7. The mass media continues to monitor and report on captured marriages in the context of increasing public awareness regarding the negative effects of captured marriages on women and human rights, while also respecting constitutional authority over culture and the rights of indigenous peoples.

CONCLUSION

This research highlights significant differences between the Customary Legal System and the National Legal System in how they handle cases of arrested marriages in Sumba, East Nusa Tenggara. The unique traditional legal norms in the Customary Law System pose challenges to law enforcement and the protection of individual rights, especially for women involved in such cases. This study provides a detailed understanding of the complex interactions between the two legal systems and emphasizes the need for legal policy revisions to promote greater inclusivity and justice, both locally and nationally in Indonesia.

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