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Forced Marriage in the Bride-Napping Case in Sumba-East Nusa Tenggara Linked with Positive Law in Indonesia

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Abstract

This study was aimed at revealing the customary and legal issues that were applied in the practice of bride-napping in Sumba, East Nusa Tenggara (NTT). The practice of bride-napping does not give women the freedom to choose their life partner and is a violation of the law that could be punished according to article 328 of the Criminal Code (KUHP). This was field research where the researcher conducted direct interviews with the informants and elaborated the data with the related literature. The method used was normative legal research with a literature study approach. The focus of this study was on the ambiguity of the implementation of laws and regulations on the practice of bride-napping. Indonesia has issued Law of the Republic of Indonesia (UU RI) No.1 of 1974 concerning Marriage which regulates the rights and obligations of each person in marriage. Finally, the result of this study was the practice of bride-napping has deviated from its origins resulting in the violations of human rights.

Keywords: forced marriage; bride-napping; Marriage Law.

Abstrak

Tujuan penelitian ini adalah untuk mengungkapkan persoalan adat dan hukum yang berlaku pada Praktik Kawin tangkap di Sumba, Nusa Tenggara Timur (NTT). Praktik kawin tangkap di NTT tidak memberikan kebebasan perempuan memilih pasangan hidupnya dan merupakan pelanggaran hukum yang dapat dijatuhi hukuman sesuai dengan pasal 328 Kitab Undang-Undang Hukum Pidana (KUHP). Penelitian ini adalah penelitian lapangan dimana peneliti melakukan wawancara secara langsung dengan para narasumber serta mengelaborasi dengan literatur-literatur yang terkait. Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan studi pustaka. Fokus kajian ini pada kekaburan implementasi hukum dan perundang-undangan pada praktik kawin tangkap tersebut. Indonesia telah menerbitkan UU RI No. 1 Tahun 1974 tentang Perkawinan yang mengatur hak dan kewajiban setiap orang dalam perkawinan. Hasil penelitian ini adalah praktik kawin tangkap sudah melenceng dari asal muasalnya mengakibatkan pelanggaran hak asasi manusia.

Kata kunci: kawin paksa, kawin tangkap, Undang-Undang Perkawinan.

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Introduction

Marriage has an important meaning in human life. Humans can channel the desire to live in pairs and continue their descendants to preserve human life. Historically, marriage by definition is normally entered into as a planned and long-term relationship between individuals (Gill A.K. & Hamed T, 2016). Concerning the event of a marriage, legal norms and regulations are needed to regulate it. The application of legal norms in marriage is needed, especially to regulate the rights, obligations, and responsibilities of each family member, to form a happy and prosperous household. The purpose of marriage is to form a happy and eternal family. Husband and wife need to help and complement each other, so each of them can develop their personality, help, and achieve spiritual and material well-being (Syarifuddin, 2004).

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Regulations about marriage are needed, so humans can live together in a family. Marriage law is a collection of rules regarding marriage. Regulations regarding marriage in Indonesia are contained in Law Number 16 of 2019 Amendments to Law Number 1 of 1974 concerning Marriage (hereinafter referred to as UUP) as a source of marriage law. The law has been formally legally valid for the Indonesian people and has become part of positive law. This UUP, in addition to laying down principles, also accommodates principles and provides the legal basis for marriage which has been the guide and applies to various groups of Indonesian society (Asmin, 1974).

Baharuddin Lopa (1996) states that every human being has the right to continue their descendants by marrying and having a family as a form of human right given by God. In addition, marriage must be guaranteed by a competent institution, so its implementation runs in an orderly manner and human rights can be accommodated properly and with certainty. Thus, it is natural for both men and women, before entering the level of marriage, it is better to use considerations in choosing their life partner.

According to Khoiruddin Nasution (2009), one of the principles of marriage is the willingness of both parties to carry out a marriage. If it is not obeyed and carried out, then the household can be temporary. Therefore, the willingness of the groom and bride is very important in building a household.

The consent to marry should ideally be a free, unfettered, and unimpeded agreement. Forced and arranged marriages may disadvantage women of all ages for their most fundamental human rights. However, forced and arranged marriages is a sensitive and complex issue, which has existed for centuries (Mtshali V, 2014).

In today's life where the flow of information is advancing very rapidly and the development of civilization is very dynamic, forced marriages and arranged marriages are considered irrelevant in society. Forced and arranged marriages of males are rare, but it does happen, sadly, forced marriages are mainly, aim at females (Kaplan, 2009). Likewise, traditional marriages of bride-napping which ignore women's rights and demean women's dignity are considered contrary to the current situation and conditions and violate human rights, and women's rights and are contrary to the Criminal Code (Seda, 2021). In modern life, rights of human emancipation are highly respected, including women's rights in choosing their life companions. Women have the same rights as men to determine their life partner and are allowed to refuse prospective husbands or wives proposed by their parents or relatives if they do not like them (Amar, 2017).

Based on the above statement, the right to determine a life partner or soul mate is entirely in the hands of the woman herself, not determined by others, including her father. As a note, forced and arranged marriages can also be described as an act of control by senior men and women in the family. Therefore, another contributing factor relating to the issue of arranged and forced marriages is the role of the family (Booley, 2021). Sadly, regardless of existing opposition and law/s, such practices persist (Thomas C., 2009). Many marriage processes that are influenced by customs and culture that sacrifice human rights, especially women's rights, are still ongoing even though many people have opposed them because they

are not at the time. Kawin Tangkap (Bride kidnapping or bride-napping) is an example that became the object of this research, which is very unusual for most people. However, it has been around for generations and is seen as part of marriage customs that must be preserved.

Bride-napping in East Sumba is known as Piti Maranggang and in Central Sumba it is Yappa Mawinni or Palai Nidi (Seda, 2021). According to community leaders, historically this type of marriage was only carried out by the nobility, considering the very high amount of belis (gold) to be paid. In subsequent developments, this type of marriage is also carried out by ordinary people. In the bride-napping process, the most important roles are uncles from the male's side and uncles from the girl's side. The uncle of the male as the person who handed over the belis or gold or cattle to the uncle of the girl caught in marriage acts as the recipient. The arrests of girls are carried out with varying ages and levels of education, ranging from children to adults and not in school or undergraduate (Samapaty, 2021).

The arrests were carried out in public places, such as on the streets, markets, water collection points, party venues, and even at the victim's house regardless of the suffering and shame that the girl would endure. The arrest process is often characterized by physical and psychological violence by the men and their families against girls who are arrested if they refuse (Taranau, 2021).

When the arrest is complete and the girl is taken to the boy's house, the male family will beat a gong like a gamelan as a sign that the process of capturing the girl as a wife for the child of the owner of the house has been successful and witnessed by the local community. After a few days, the girl is at the boy's house, the male will send the male uncle to meet the arrested girl's parents to apologize for the girl's arrest as well as hand over belis or gold and cattle (Seda, 2021). The goal is to re-establish kinship between the two families and property does not fall to other parties.

In its development, the practice of bride-napping is mostly carried out among ordinary people who have no kinship or previous marriages by taking advantage of the opportunities provided by local customary law and culture, even though the girl does not love the boy who catches her just to show male masculinity. One of the cases of bride-napping that occurred in 2017 was experienced by a woman who worked at a local non-governmental organization. He was put in the car and taken to the man's house who will marry her. He admitted that he was arrested and detained for days by his family who wanted him as a son-in-law. The victim said several people suddenly picked him up and carried him into a car. Arriving at the perpetrator's house, many people had already hit the gong, carrying out the ritual that often occurs when Sumbanese take women away. Every effort and seduction were made to get his and his family's approval. However, she continued to refuse to eat and drink, cried all night, and didn't sleep, "I think I really want to die," said her. Then, her family came for the negotiation process based on the custom to proceed. Finally, on the sixth day, the family was accompanied by the government of villages and NGOs, who managed to bring him home (Kompas.com, 2022).

According to the data collected by Dianita Aprissa Lambu Taranau, secretary of the Regional Management Agency of Peruati Sumba, there were at least seven cases of bride-napping from 2016 to June 2020. Several women managed to escape, while three of them continued their marriage. The two most recent cases occurred on 16 and 23 June 2020 in Central Sumba. One of the women ended up getting married (Taranau, 2021). This has become a public spotlight and has begun to oppose this custom and culture which is considered irrelevant to the current situation. However, various efforts made by the community in opposing the capture marriage process have always failed, because some of the elders are still trying to perpetuate this tradition. After all, it is common place and ancestral heritage.

The secular character of the normative system embodied in human rights doctrine is essential to its comprehension. All its premises, values, concepts, and purposes are related to the homocentric world and ways of thought freed from transcendentalist premises and the jurisdiction of religious authority. Thus, the development of the doctrine of human rights is inseparably connected to the process of secularization of Western society (Raday, 2003). Culture may be described as a macro-concept because it is definitive of human society (Raday F, 2003). Furthermore, all groups of people who are part of the same culture and in particular the same rules of behavior can form an indigenous people. Etymologically, the word "adat" comes from the Arabic word al-'adat which means certain behavior that is done repeatedly, so that it becomes a habit. Customary law grows and develops in a society called a legal alliance, namely the unity of the community order as a mixture of genealogical and territorial orders (Ter Haar, 2011). This customary law is a set of norms or rules, both written and unwritten, that live and apply to regulate human behavior which is rooted in the cultural values of the Indonesian nation, which are passed down from generation to generation, which are always obeyed and respected for justice and public order and have legal consequences or sanctions (Regulation of the Minister of Home Affairs Number 52 of 2014). Customary law is essentially customary law, meaning that habits that have legal consequences (Sein-Sollen) are different from mere habits, habits that are customary law are actions that are repeated in the same form (Soekanto, 2016).

Regarding bride-napping, there are still many people in Sumba-NTT who adhere to the customs. They still believe that the entire order of the rules of life handed down by their ancestors is a way of life that must be obeyed. A habit that occurs in bride-napping can even be interpreted as a form of human rights violations and discriminatory actions. Inferences may be drawn that patriarchal cultures, relating to the treatment of women, are perhaps necessarily contrary to the notion of modern-day human rights doctrines (Raday F, 2003).

Juridically, the government has regulated women's rights in Law No. 39 of 1999 which contains the rights to have a family and the rights of women. In addition, the regulation of the state minister for Women's Empowerment Number 2 of 2008 is stated in Chapter I regarding general provisions that explain the prohibition of discrimination against women. Based on this background, the

author was interested in discussing the legal issue of forced marriages that occur in bride-napping in Sumba, East Nusa Tenggara.

Research Problems

First, how is the regulation of the Marriage Law on the Case of Bride-napping in Indonesia? And second, how is the legal protection arrangement for Bride-napping Cases in Sumba-East Nusa Tenggara?

Research Methods

The method used was normative legal research with a literature study approach. Then, the focus of the study is on the ambiguity of the implementation of laws and regulations on the practice of bride-napping. The normative research method is normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues faced (Soemitro, 1990).

Discussion

The Existence of the Marriage Law on Bride-napping Cases

The source of positive law in Indonesia which contains about marriage is Law No.1 of 1974, which adheres to the principle or principle of voluntary marriage in marriage. In Article 6 paragraph 2 of the Law, it is explained that marriage must be based on the consent of the two prospective brides and this agreement must be carried out of the free will, without coercion from the prospective groom or bride.

Regarding the conditions for the validity of a marriage, the Marriage Law Number 1 of 1974 has regulated it in Chapter II, precisely in articles 6 to 12 which are basically as follows:

1. Based on the free agreement between the prospective husband and the prospective wife, means that there is no coercion in marriage.
2. In principle, marriage is one wife for one husband and vice versa only one husband for one wife, unless dispensation is obtained from the Religious Court with severe conditions to be allowed to take more than one wife and there must be permission from the first wife, there is certainty from the first wife. The husband that can guarantee the necessities of life for the wives and children and the assurance that husbands will treat their wives and children fairly.
3. Men must be 19 years old and women 16 years old.
4. Must obtain permission from both of their parents, except in certain cases when the bride and groom are 21 years old or older or get a dispensation from the Religious Courts if the age of the candidates is less than 19 and 16 years.
5. It does not include prohibitions on marriage between two people who:
 - a. Blood-related in a straight line down or up.
 - b. Blood-related in the lineage to the side, namely between siblings, between siblings and parents' siblings, and between one and his grandmother's brother.
 - c. Sexual intercourse, namely mother-in-law, stepdaughter, and daughter-in-law with mother/stepfather.
 - d. Related to breastfeeding, namely nursing parents and aunts/ uncles.

- e. Having a sibling relationship with the wife (in-law) or as an aunt or nephew of the wife in the case that the husband has more than one wife.
- f. Having a relationship whose religion or other regulations that are still in effect are prohibited from marrying.
6. A person is still bound by marriage to another person, except for dispensation from the Court.
7. A person who has been divorced for the second time, between them may not be married again, as long as the law of each religion and belief does not determine it anymore.
8. A woman whose marriage was terminated to remarry has exceeded the waiting period.
9. Marriage must be carried out according to the marriage procedure regulated by Government Regulation Number 9 of 1975, and Minister of Religion Regulation Number 3 of 1975 concerning the Registration of Marriage, Divorce and Reconciliation.

Marriage has the intention that husband and wife can form an eternal and happy family, following their respective rights and obligations. Thus, marriage must be agreed upon by both parties without coercion from any party. Although it is not explained in detail by positive law regarding the definition of forced marriage, from the concept of voluntary or free and without coercion consent from both prospective brides, which is adopted by Law No. 1 of 1974, it can be explained that what is meant by forced marriage is a marriage that occurs because of an element of coercion from another person, which in this case is the parents. In 2006, the General Secretary of the United Nations, Kofi Annan defined forced marriage as one that, "lacks the free and valid consent of at least one of the parties". He continues; "In its most extreme form, forced marriage can involve threatening behavior, abduction, imprisonment, physical violence, rape, and in some cases murder (Women Living under Muslim Laws, 2013). In forced marriages, it is argued that there is no consent, whether free or full or informed, however, the involvement of the family is dominant in finding not only a suitor but also the suitor is the choice of the family. In other words, the suitor is regarded as the family's prerogative and not the prerogative of the woman to the marriage (Sabbe A., Temmerman M., Brems E. & Leye E, 2014). Women who want that coercive practices in marriage against girls the reason the right to coerce are in the hands of guardians or parents must be categorized as acts that cannot be justified and even violate human rights. Therefore, marriage must get the consent of the woman.

The existence of the marriage law has a historical background related to the movement and struggle of women in demanding equal and humane treatment on the side of men. Among the demands they want, it is a guarantee of legal protection that protects their human rights in the field of marriage. This law is also evidence of partiality to women's human rights as a consequence, women may no longer be treated as objects in marriage, and be forced to marry for reasons of equality in social, economic, and political status (Mirin Primudiasti, 2003).

Legal Protection Arrangements for Bride-napping Cases in Sumba-East Nusa Tenggara

The tradition of bride-napping of the Sumba Tribe carried out by force is a crime against humanity. It results in acts of sexual violence in which the victim suffers a loss of constitutional rights that appears to be contrary to positive law because the rules in the Marriage Law, Human Rights Act, Basic Law 1945, the Law on Child Protection, and other laws concerning women's rights are not implemented properly.

Apart from being against positive law, the existence of bride-napping is also against religion. Aprisa, as a religious leader stated that:

“Currently, my friends and I have reached the point where bride-napping is no longer allowed. Currently, such marriage is no longer relevant to do. It is no longer relevant because there is coercion and psychological and sexual violence against women. And this is done not only by people who are not educated but, scholars, officials, and civil servants are still doing it. Why should it be maintained if it only produces violence? As for the victims, it can be women who are graduates, teachers, and many victims. There are calls from the church, that this should not be done anymore.”

The Bill on the Elimination of Sexual Violence against women and children provides terminology limits, violence against women has an important characteristic that the action can be in the form of physical, sexual, or non-physical (psychological) actions, can be carried out actively or passively (do not act), is desired or is intended by the perpetrator, and causes adverse consequences for the victim (physical, sexual, or psychological) that are not desired by the victim. The limitation of forms of violence against women is not only limited to the definition above, but it also includes gender-based violence in the social, economic, cultural, civil, and political fields or other fields.

Based on the bill, bride-napping is a form of violence. From a sociological and feminist perspective, it can be seen that bride-napping is violence against women. The practice of bride-napping arises as a result of customary manipulation. Initially, the practice of abducting the bride during bride-napping was carried out with the consent of the woman. That is, this kidnapping is part of the marriage ritual. However, the practice is increasingly deviated and becomes full of intimidation. Based on an interview with Sherly, a women activist regarding the settlement of legal cases that occurred, she explained:

“There is no legal umbrella for this bride-napping, so the practice of bride-napping is still happening. When she enters the house, then the woman is doused with water, then the woman becomes the property of the man. It's up to what to do so that sexual violence often occurs.” It was rooted in the patriarchal culture that exists in society.

A patriarchal culture that gives birth to a very strong social structure and system. This patriarchal culture legitimizes the occurrence of sexual violence against women. The practice of bride-napping culture shows how male power is still dominant. Because of this domination, many new variants of violence hide behind the culture. From a sociological perspective, men and women are polarized

in culture as “opposite” and “unequal.” The superiority of men over women (patriarchy) started from the story of the creation of the first human in which Adam was created the first Eve so that Adam is superior to Eve.

Forced marriages are also driven by social conditions that reflect social or economic inequalities between community groups. Regarding violence against women, several studies have identified a link between gender inequality and the level of violence against women. The results of the identification of several social factors that may create conditions that lead to the occurrence of violence include: a) society's permissive attitude towards violence against women, b) men's control in decision-making and restrictions on women's freedom, c) men's identities and roles and women who are rigid in society, d) peer relations that demean women, e) a slum and densely populated environment, f) exposure to violence.

The practice of forced marriage is not justified. Indigenous people in Sumba who are still silent without help when they see the practice of forced marriage are evidence of gender inequality. This custom shows the fact that not a few people who are closest, especially their guardians/parents, force their children's marriages. Even forced marriages also occur to women who are still young. Child marriage is a form of sexual violence because at that age children are not ready to have sexual relations.

Child marriage can occur because of forced marriage by parties who have more power. Forced marriage is a form of exploitation and violence against children. In a society that is underprivileged and lives in poverty, it is not uncommon for the forced marriage of children to be considered as a solution to get out of poverty and as an escape from parental responsibility. The exploitative marriage process can have a new impact, the occurrence of a cycle of domestic violence. This situation reflects where the perpetrator feels that he is the “owner” of the victim's body and therefore has the right to do anything. This enslavement includes situations where women or children are forced to enter into unwanted marriages or are forced into marriage. Violence against women is a global phenomenon that has occurred throughout the centuries of human life and occurs in various regions.

The practical implications of forced marriage or child marriage harm the normal growth and development of children. Parents are obliged to prevent the marriage from occurring if it is felt that the marriage will harm and cause negative things for the prospective bride and groom. Parents bear full responsibility for all the negative consequences of their children's marriage. This parental obligation is following the provisions of Article 26 Paragraph (1) letter (c) of Law Number 23 of 2014 concerning Child Protection "to prevent marriage at the age of a child" in the context of forced marriage. It aims to prepare children to grow and develop optimally to live tomorrow, including when they build a family. This should be the awareness of every parent to provide opportunities for the child in the process of exploring experiences and insights. Rules that explicitly prohibit discriminatory acts against women have also been stated in Law No. 7 of 1984, which was promulgated on July 24, 1984, namely concerning the ratification of the Convention regarding the elimination of all forms of discrimination against

women. Law No. 7 of 1984 was the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women, commonly abbreviated as CEDAW.

Law No. 7 of 1984 concerns the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (or what we know as the CEDAW Convention) and Law No. 23 of 2002 concerning Child Protection. In Law No. 7 of 1984 Article 16, it states:

1. States Parties shall take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations on an equal basis between men and women, and shall in particular ensure:
 - a) The same right to enter the marriage stage;
 - b) The same right to choose a husband freely and to enter into marriage only with free and full consent;
 - c) The same rights and responsibilities during the marriage and at the termination of the marriage;
 - d) The same rights and responsibilities as parents, regardless of their marital status, in matters relating to their children. In all cases, the interests of the children must come first;
 - e) The same right to determine freely and responsibly the number and spacing of their children and to obtain information, education, and means to enable them to exercise these rights;
 - f) The same rights and responsibilities concerning guardianship, care, supervision, and adoption of children or similar institutions where these concepts exist in national legislation, in all cases the interests of the children shall take precedence;
 - g) The same personal rights as husband and wife, including the right to choose a family name, profession, and position;
 - h) Equal rights for both husband and wife regarding ownership, acquisition, management, administration, enjoyment, and transfer of property, either free of charge or with compensation in the form of money.
2. The engagement and marriage of a child shall have no legal effect and all necessary measures, including legislation, shall be taken to establish a minimum age for marriage and to require registration of marriages at the official Civil Registry Office.

In the law above, it is clear that the one who has the right to determine who the child's life partner is, how, and when he will marry is the child himself as a manifestation of the child's human rights. Meanwhile, parents do not have the right to unilaterally impose their children's will to marry someone.

Likewise in the matter of choosing a life partner, women should also have the right to choose their mate, because forced marriage on women is not only a discriminatory attitude but also violates women's human rights. As stated in General Recommendation No. 21 on equality in marriage and family relations, article 16 of the Convention on the elimination of all forms of discrimination, point (b), that in all matters relating to marriage and family relations and in particular must ensure, based on equality between men and women, that they have the same

right to freely choose their partners and enter into marriage only with their free and full consent (Convention Watch Working Group, 2007: 68). Even in the explanation, it is stated that the right of a woman to choose a partner and to marry without coercion is important for her life and her dignity and equality as a human being. A study of reports from States parties reveals that there are States based on customs and habits, religious beliefs or ethnic origins of a particular group, permit forced marriage, or remarriage. European countries such as Belgium, Norway, and Germany, have resorted to instituting legislative measures which would render forced marriage/s a criminal offense (Zebari, D, 2013). In 2005, the UK government conducted a national consultation on whether a specific criminal offense of forced marriage would assist in the prevention of this (Chantler K., Gangoli G. & Hester, M, 2009). In other regulations, it is also explained that to realize justice and equality for women. The regulation is that Article 16 Paragraph 2 of the UDHR (Universal Declaration of Human Rights) emphasizes that marriage is considered to occur only with the free consent of both parties.

The existing provisions, both in the convention and the UDHR, can be used as instruments to realize gender equality and justice concerning marriage. It is because these provisions show that marriage or building a household is the right of every human being. It is not only the right of men, but women also take part. Then, the agreement of both parties is the main condition that determines whether a marriage is legal or not. For this reason, marriage should not be based on the unilateral interests of the guardian's parents, but there must be the consent of the man or woman who wants to marry.

Moreover, in Indonesia's jurisdiction, there is Law Number 39 of 1999 concerning Human Rights, which this Law also serves as a rule that protects women's human rights, this is stated in the second part concerning "Rights to Family and Continuing Descendants" in Article 10 paragraph (1) that everyone has the right to form a family and continue their descendants through a legal marriage, is emphasized by paragraph (2) that a legal marriage can only take place at the free will of the prospective husband and wife concerned under the provisions of the legislation.

Article 26 of the Child Protection Law concerning the Obligations and Responsibilities of Parents has been affirmed:

Parents are obliged and responsible for:

1. Nurturing, taking care, educating, and protecting children;
2. Develop children according to their abilities, talents, and interests;
3. Preventing child marriages.

The article mandates that parents are obliged to prevent marriage at the age of children, especially in the context of forced marriages. It aims to prepare children to grow and develop optimally in preparation for tomorrow, including when they build a family. This should also be the awareness of every parent to provide opportunities for the child in the process of exploring experiences and insights. From these provisions, both internationally and nationally, it is clear that everyone is guaranteed by law to form a family life or carry out a legal marriage. This guarantee is given as a form of respect for the human rights of women who

wish to marry. The right to marry itself is the right of each couple who wants or wishes to marry and by law is referred to as free will, which means a will that is not preceded, followed, and not under coercion from other parties. Therefore, coercion or being forced to carry out a marriage is a form of discrimination that is contrary to legal provisions. The Bill on the Elimination of Sexual Violence in its text categorizes forced marriage as a form of sexual violence in Article 11 letter f and Article 17, which when reviewed that forced marriage occurs when someone abuses their power with violence, threats of violence, trickery, a series of lies, or other psychic stresses; so that a child cannot give real consent to do his marriage. In this case, it is very important to have a Bill on the Elimination of Sexual Violence, one of which is to protect Indonesian women and children in particular, and also to save their future, especially in this sophisticated era of globalization. It is ironic if you still think traditionally about marriage.

The Bill on the Elimination of Sexual Violence will fill the legal vacuum of the Child Protection Act and at the same time renew the form of punishment in the Child Protection Act. This provision is based on the Child Protection Act no. 35 of 2014 Article 13 Paragraph (1) which is used as a reference in the preparation of the Law on the Elimination of Sexual Violence to provide an umbrella of protection for victims of sexual exploitation who are not children. The Law on Child Protection applies if the victim is a child, that is, a person who has not reached the age of 18 years. The Child Protection Act provides a high criminal threat for perpetrators of sexual violence against children. Meanwhile, the Law on the Elimination of Sexual Violence that will be drafted will establish a comprehensive, integral, and holistic sentencing mechanism including the obligation to rehabilitate perpetrators. The punishment given will be accompanied by a weight if the victim is a child.

Meanwhile, Law Number 35 of 2014 concerning Amendments to the Child Protection Act states that sexual crimes are prohibited acts against children. This is progress, and the regulation needs to be improved, considering that sexual crimes are also prohibited acts against everyone, including women and children, both boys and girls. Therefore, the Law on the Elimination of Sexual Violence will be drafted by taking into account when sexual violence occurs in children, and criminal penalties will be imposed on people who commit sexual violence against children. This includes ensuring arrangements for recovery in various stages that will be given to children and women victims of sexual violence, as well as the need for different treatment for children who are victims of sexual violence in the criminal justice process.

The practice of bride-napping, if it is related to the Bill on the Elimination of Sexual Violence, that a person who forces his will to marry without his consent to marry, is a type of sexual violence. It is because forced sexual intercourse is an inseparable part of marriage. This provision is also strengthened by the existence of criminal penalties if the victim is an adult woman, as well as a more severe punishment if the victim is a child.

Bride-napping carried out by coercion and not being approved by the women is contrary to the legal principles of marriage according to the Law of the Republic of Indonesia No. 1 of 1974 concerning Marriage with the aim of marriage is to form

a happy and eternal family (Mardani, 2011). Forcing women will not be able to create a happy family. Forcing a woman to marry someone she doesn't like can cause mental or psychological problems. Mental or psychological disruption of women in a household will not be able to create a happy and eternal family. A broader perspective of criminal law explains that any person who experiences confiscation and or arrest by another person that he does not want can be categorized as kidnapping. Kidnapping laws can be used even if the restraints are substantial enough to interfere with the victim's freedom, the perpetrator will be punished based on most kidnapping laws (Dressler, 2002). Confinement/kidnapping in Indonesia is regulated in Article 328 of the Criminal Code (KUHP) which reads "Anyone who takes someone away from his place of residence or temporary residence intending to place that person unlawfully under his control or the power of another person, or to put him in a state of misery, is threatened with kidnapping with a maximum imprisonment of twelve years" (Ministry of Law and Human Rights, 2013).

The Law of the Republic of Indonesia No. 1 of 1974 concerning Marriage clearly states that in a marriage it is necessary to prepare the conditions for the marriage. If viewed from the terms of marriage, the Law of the Republic of Indonesia No. 1 of 1974, bride-napping is not under Article 6 Paragraph 1 which reads that marriage must be based on the approval of the two prospective brides, and Paragraph 2 which reads that to carry out a marriage, a person who has not reached the age of 21 (twenty-one) years must obtain permission from both parents.

The tradition of bride-napping carried out by forcibly taking women who are not allowed to determine who they will marry is a case of human rights violations. This makes women oppressed and often bride-napping is accompanied by violence. Criminal law in Indonesia prohibits the practice of kidnapping, but the cultural context of the Sumbanese tradition of kidnapping marriages is a legal marriage procession. This creates confusion for the people of Sumba and law enforcement officials in Sumba. However, this tradition of bride-napping should be stopped because it oppresses women. The following are the results of interviews with informants who agree that this bride-napping must be stopped.

In its application, bride-napping is contrary to the Criminal Code Article 332 Paragraph (1) which reads "it is a fault of escaping a woman and threatened with imprisonment for a maximum of nine years, whoever takes away a woman by deceit, violence or threats of violence, to ensure control over the woman, both inside and outside of marriage" (Ministry of Law and Human Rights, 2013). With this, the perpetrators of bride-napping should be sentenced to prison following these provisions. A marriage that does not comply with the requirements or does not meet the requirements contained in the law of Marriage can be annulled. As this is further regulated in Article 22 of the Marriage Law, which states that marriages can be annulled if the parties do not meet the requirements for marriage.

Conclusion

The practice of bride-napping in Sumba, East Nusa Tenggara, violates human rights, especially women. This marriage also causes prolonged trauma on the part of women because it is accompanied by violence. Not all people blame the attitude of the perpetrators of bride-napping. Some people defend it with the reason that it is a traditional heritage that must be preserved. Community leaders, youth leaders, traditional leaders, and the church have tried to socialize with the community so that in its implementation it is not accompanied by violence. However, there are still violations. It is difficult for the authorities to take action against perpetrators of violence in bride-napping because several community leaders have defended them. This practice can be punished following Article 328 of the Criminal Code (KUHP).

Suggestion

Forced arrest of women can be detrimental to mental health and can negatively affect the psychology of women who experience Mating. Indonesia, which is a country of law, has issued Law of the Republic of Indonesia No. 1 of 1974 concerning Marriage. In the perspective of The Law of the Republic of Indonesia No. 1 of 1974 concerning forced marriage, it is not in accordance with the principle of marriage which aims to create a happy family. Forced intermarriage can also be legally canceled in accordance with Article 22 of the Law of the Republic of Indonesia No. 1 of 1974 concerning Marriage.

References

- Amar, S. (2017). Perjuangan Gender Dalam Kajian Sejarah Wanita Indonesia Pada Abad XIX. *Fajar Historia*. Volume 1 Nomor 2.
- Asmin. (1974). *Status Perkawinan Antar Agama Ditinjau dari Undang-Undang Perkawinan No. 1 Tahun 1974*. Jakarta: Dian Rakyat.
- Booley, A. (2021). Legal and Social Complexities Relating to Practice of Arranged and forced Marriages. *Journal Syariah*. Jil. 29, Bil. 1. 21-42.
- Chantler, K. (2009). Gangoli G. & Hester M., 'Forced Marriage in the UK: Religious, Cultural, Economic or State Violence?'. *Feminist Legal Studies*. Vol. 17.
- Dressler, J. (2002). *Encyclopedia of Crime and Justice*. 2nd Edition. New York: Gale Group.
- Gill A.K. & Hamed T. (2016). Muslim Women and Forced Marriages in the UK. *Journal of Muslim Minority Affairs*. Vol. 36 No. 4.
- Kaplan, Y, S. (2009). A Father's Consent to the Marriage of his Minor Daughter: Feminism and Multiculturalism in Jewish Law. *Review of Law and Social Justice*. Vol. 18 No. 2.

- Kelompok Kerja Convention Watch. (2007). Rekomendasi Umum No. 21 Tentang Kesetaraan Dalam Perkawinan dan Hubungan Keluarga Pasal 16 Konvensi Penghapusan Segala Bentuk Diskriminasi Poin (b).
- Kementerian Hukum dan HAM (2013). Pasal 328 Kitab Undang-Undang Hukum Pidana (KUHP).
- Lopa, B. (1996). *Al-Quran dan Hak Asasi Manusia*. Jakarta: Dana Bhakti Prima Yasa.
- Mardani. (2011). *Hukum Ekonomi Syariah di Indonesia*. Bandung: Refika Aditama.
- Mtshali, V. (2014). Forced Child Marriage Practiced under the Pretext of Customary Marriage in South Africa. *Child Abuse Research: A South African Journal*. Vol. 15 No. 2.
- Nasution, K. (2009). *Hukum Perdata Islam Indonesia dan Perbandingan Hukum Perkawinan di Dunia Muslim, Studi Sejarah, Metode, Pembaruan dan Materi dan Status Perempuan dalam Perundang-Undangan Perkawinan Muslim*. Yogyakarta: Academia.
- Primudiasti, M. (2003). Perlindungan Hukum Terhadap Hak Asasi Perempuan dalam Menyetujui Perkawinan. *Dinamika Hukum*. No. 19. Tahun ke-IX.
- Raday, F. (2003). Culture, Religion, and Gender. *International Journal of Constitutional Law*. 1 (4). 663-715. <https://doi.org/10.1093/icon/1.4.663>
- Sabbe, A. (2014). Temmerman M., Brems E. & Leye E., 'Forced Marriage: An Analysis of Legislation and Political Measures in Europe. *Crime, Law, and Social Change*. 62 (2). 171-189.
- Samapaty, U, R. (2021). *Tokoh Pemuda Sumba*. Nusa Tenggara Timur
- Seda, F. (2021). Dalam penganugerahan Tokoh Muda NTT. Accessed on, Thursday, 2 November 2022. <https://www.kompas.id/baca/dikbud/2021/10/05/tiga-tokoh-muda-terima-frans-seda-award-2021>.
- Soemitro, R, H. (1990). *Metodologi Penelitian Hukum dan Jurimetri*. Jakarta: Ghalia Indonesia.
- Soekanto, S. (2016). *Sosiologi Suatu Pengantar*. Jakarta: Rajawali Pers
- Syarifuddin, A. (2004). *Hukum Islam di Indonesia*. Jakarta: Perdanan Media.
- Ter Haar. (2011). *Asas dan Tata-tatan Hukum Adat (Beginzelen in Stelsel Van Het Adat Recht)*. Jakarta: CV. Mandar Maju.
- Taranau, D, A, L. (2021). Sekretaris Badan Pengurus Daerah Peruati Sumba, setidaknya ada tujuh kasus kawin tangkap sepanjang 2016 hingga Juni 2020.

Thomas, C. (2009). *Forced and Early Marriage: A Focus on Central and Eastern Europe and Former Soviet Union Countries with Selected Laws from Other Countries*. United Nations Division for the Advancement of Women.

Women Living under Muslim Laws. (2013). *Child, Early and Forced Marriage: A Multi-Country Study. A Submission to the UN Office of the High Commissioner on Human Rights (OCHCR)*. London: Women Living under Muslim Laws.

Zebari, D. (2013). Forced Marriage and International Human Rights. *International Journal of Humanities and Management Science*. Vol. 1 (5). 293-295.