



JURIDICAL IMPLICATIONS OF FORCED MARRIAGE AS A FORM OF VIOLENCE AGAINST WOMEN

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Abstract

The practice of forced marriage in Southwest Sumba regency reflects the conflict between customary law and national law that has a serious impact on the fulfillment of human rights, especially women's rights. One form of such practice is mating capture, which is a tradition that is still found in some Indigenous communities and is often carried out without the consent of the women who are victims. This practice causes various forms of harm, both physically, psychologically, socially, and legally, so it can be categorized as a form of violence against women. This study aims to analyze the juridical implications of forced marriage as a form of violence against women and assess the challenges of applying the law in a society that is still strong in maintaining customary values. This study uses empirical legal approach with socio-legal methods. The analysis was carried out through normative studies of national legislation, especially Law Number 12 of 2022 on Sexual Violence Crimes (TPKS law), the Criminal Code, and various international human rights instruments that have been ratified by Indonesia. The study was combined with empirical data obtained from the practice of Capture mating in the field to understand the gap between legal norms and social reality. The results showed that Article 10 of the TPKS law has expressly criminalized forced marriage and provides a stronger legal basis in protecting women. However, its implementation still faces various obstacles, including the belis culture which requires high costs, structural poverty in East Nusa Tenggara, low legal awareness of the community, and resistance from some Indigenous communities to state intervention. Although law enforcement officials began to implement a more progressive approach through the TPKS law and the Criminal Code, there is still a significant gap between legal norms and social practice. Therefore, synergy between the government, law enforcement officials, Indigenous leaders, and civil society is needed to strengthen legal protection and ensure the effective fulfillment of women's rights.

Keywords: *Forced Marriage; customary law; TPKS Law; Human Rights; Southwest Sumba.*

INTRODUCTION

Indonesia is a developing country with an archipelago with a diversity of religions, languages, tribes, cultures and the practice of marriage customs that vary by adhering to the patrilineal system (patriarchal), matrilineal (maternal) and bilateral/parents (father and mother) different from island to island.¹ Marriage in some tribes and regions of Indonesia is an event that must be carried out in line with the fulfillment of sacred customs. Marriage is a legal relationship between a man and a woman for a long period

¹ Naomi Familia, Dkk, Analisis Pengaruh Tradisi Kawin Tangkap Di Sumba Terhadap Hak Asasi Perempuan, Unes Law Review, Vol. 6, No. 1, September 2023, p. 2548



of time in order to form a family in compliance with the conditions established in the regulations recognized by the state.

Along with the development and increasing progress of time and civilization, it should also be followed by the development and increase in the quality of human life, both in terms of physical health, mental strength, spiritual well-being, relationships with others, work, education, economy, and so forth. A prosperous and peaceful life is something that must be pursued, in order to achieve happiness and tranquility, which of course is very coveted by everyone. Marriage is one way to achieve this goal. Every human being as a free and reasonable individual, of course, has the right to determine their own life choices, with whom they want to marry and how the marriage will take place. different and special, as the tradition of mating catch can only be found on the island of Sumba

In the end, the tradition of mating capture is no longer describing the beauty and nobility of a tradition born of the cultural process, but a scourge for women who are often victims of kidnapping and coercion. In Sumba adheres to patriarchal principles, which are then increasingly supported by demographic conditions that are more men than women. This is what finally nourishes the practice of mating catch misguided. According to the Quran a Muslim is one who has absolutely surrendered to Allah and his commands and believes in pure Tawhid (the oneness of God) that isn't tainted with any shirk and this is why the Almighty has introduced prophet Abraham as a true.² Women who are physically vulnerable, the weaker their position when they finally marry catch the mistake into something that seems to be no longer fixable, because women feel dirty or from the local community that pamali for women to reject the proposal for fear of potentially disastrous, namely being an old maid because no one wants to marry her, then it is difficult to get offspring. Shame must also be borne by the family because it is considered unable to protect the woman who has become a victim.

With these reasons, the practice of wrongful arrest marriage was finally allowed and seemed justified, and the marriage was continued. With the emergence of cases of mating capture from year to year, this brings concern, especially for activists who fight for the rights and equality of women in society to stop praktikarang, where the progress of the Times should go hand in hand with the progress of civilization, mating capture is mistaken. The same spirit that was finally brought to continue to fight for the protection and fulfillment of rights for women, so that law No. 12 of 2022 about the sexual violence criminal act (TPKS). Article 10 of the TPKS law can be used as a legal payuna for victims of wrongful arrest marriage practices, because it is clear that there are elements of coercion and forced placement of the woman under male control.

Logically, women who have weaker physical conditions, of course, are helpless when treated harshly and brutally by men, thus mating capture is no longer a customary marriage process, but a crime of kidnapping and specifically sexual abuse. Marriage arrest that is carried out with criminal and irresponsible purposes is certainly mandatory to be followed up legally, considering that the victim has arisen as an injured party. What is experienced by women who are victims of captured marriage practices, does not have to be solely in the form of physical losses and injuries that can be seen with the naked eye, but must also be seen and understood in more depth about their psychological condition. This shocking and frightening thing must have a mental impact on the victim because

2 Wenny Juliani,&Listyowati Sumanto, *Praktik Adat Kawin Tangkap Masyarakat Sumba Sebagai Bentuk Nyata Kekerasan Seksual*, Ensiklopedia Education Review, Vol 6 no 3, 2024. P.96

everything happens suddenly and beyond his power, even often the victim is helpless and can only surrender.³

Indigenous leaders and the community must consciously understand and reflect back on the meaning of the true tradition of mating capture, which is still pure cultural heritage and ancestors. For every wrongful act of mating arrest, it should be criminalized and not protected and / or justified for reasons of tradition and culture.⁴

Marriage for the people of Sumba is a process to unite women and men who love each other through the procession of the prevailing customs. Sumba people consider a legal marriage is when women and men have passed through the customary procession that applies is moving customs (dikik) this procession is the last stage where women legally become the wife of the man she loves. The implementation of marriage has several types with the customs of each region. In the customs of Southwest Sumba (especially kodi) about normal marriage or common marriage there are three stages, namely: open letter or (phudogo takki), Kat adat / sign request (latahmamma), moving adat/belis.⁵

The stages in the Sumba traditional marriage process are closely interrelated to create a marriage that suits the local culture. The first stage, known as buka surat or phudogo takki, is when the male party comes to the woman's family home just to express feelings without bringing any items. If the woman and her family accept these feelings, both families then determine the time to proceed to the next stage. The second stage is ikat adat or tahmamma, where the men come with animals as a sign of seriousness, and the women's families reply by providing cloth and pigs, as a sign of an agreement on dowry or belis, as well as determining the time of the next stage. The last stage is the adat move or dikin, in which the male party brings the agreed animals, while the female family prepares a cloth, two pigs (one dead pig for the invitation, and one live pig for keeping), as well as household items such as cabinets, bedding, and kitchen utensils. At this stage, the woman will be ready to move into the man's House and legally become a wife. In addition, jewelry such as bracelets from elephant ivory (catfish), gold earrings, gold necklaces, and riding horses (darapaklete) are also given as a symbol of marriage confirmation.⁶

The Sumba Tribe, located in East Nusa Tenggara and divided into four districts, adheres to a patrilineal family system with strong Customs, one of which is the practice of forced marriage known as Piti Rambang.(Zurnetti & Raihany, 2024)⁷ This practice occurs due to coercion from one of the tribal parties and has implications for human rights violations, in particular the rights of women lost as a result of sexual violence and forced marriage. This condition is contrary to national law and the Indonesian constitution, including marriage laws, Human Rights Laws, and child welfare laws that are supposed to protect women's rights

Although the tradition of mating capture is part of the indigenous people recognized in the Constitution of 1945 Article 18, its implementation must still be in line with the values of Pancasila and must not violate human rights. Forced marriage is a form of

3 Wenny Juliani,&Listyowati Sumanto, p. 103

4 Wenny Juliani,&Listyowati Sumanto, p. 104

5 Kosat, D. R. K. D. R. (2024). Praktik Kawin Tangkap di Sumba Dihubungkan dengan Hukum Positif Indonesia. *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat*, 2(02)

6 Kosat, D. R. K. D. R., p. 259

7 Zurnetti, A., & Raihany, F. A. (2024). Legal Framework on Ensuring Children's Protection from Forced Marriage as a Type of Sexual Violence. *Proceedings of the ASEAN Conference on Sexual Exploitation of Children (ACOSEC 2024)*, 139

violence against women that is internationally recognized as a human rights violation and is prohibited by instruments such as the Universal Declaration of Human Rights and CEDAW. Indonesia itself has taken progressive steps through Law Number 12 of 2022 concerning the crime of sexual violence which criminalizes forced marriage with a maximum prison sentence of 9 years.⁸

In Southwest Sumba, the practice of mating capture still takes place in a patriarchal society with a hierarchical social structure. The belis system involving dowry in the form of animals and other goods is a social mechanism that positions women as objects of transaction, especially in conditions of high poverty in East Nusa Tenggara. This economic pressure encourages women's families to sometimes accept the practice of forced marriage as a pragmatic solution. A viral case in September 2023 featuring the practice of mating capture on social media has sparked a national debate over the protection of women's rights and the effectiveness of law enforcement.

The phenomenon of forced marriage in Southwest Sumba is a clear example of the conflict between customary law and National Law, where traditions that are considered part of cultural identity often face the protection of human rights. The documentation between 2013 and 2023 shows a systemic pattern of forced marriage practices involving at least 20 cases, which is estimated to be only a small fraction of the overall unreported cases. Imbalance of power, poverty, and patriarchal values are factors that strengthen social legitimacy of the practice, as well as being a major challenge in the implementation of the TPKS law.⁹

The gap between normative legal protection and the reality of implementation on the ground reflects the complexity of social transformations in societies with strong indigenous systems. The TPKS law, although it has provided a strong legal basis for the enforcement of forced marriage, has not been accompanied by adequate implementation mechanisms to address the root structural problems that perpetuate this practice. This indicates the need for a holistic approach that not only focuses on the punitive aspect, but also on sustainable social transformation. The urgency of this study lies in the need to understand the dynamics of legal implementation in the context of Indonesian Legal Pluralism, particularly in terms of the protection of women's rights. The complexities faced in the case of Southwest Sumba can provide important lessons for efforts to eliminate violence against women in other areas with similar characteristics. In addition, an analysis of the effectiveness of the TPKS law in a concrete context can provide valuable input for the improvement of policies and implementation strategies in the future.

This study uses the type of normative juridical research, namely legal research conducted by researching library materials or secondary data as the basis for research by conducting a search of the regulations and literature-literature related to the problem under study.¹⁰ The approach to the problem used in this study includes a statutory approach (statue approach) is an approach by researching and studying all relevant laws Furthermore, the sources obtained in this research are sourced from secondary data, namely Law Number 12 of 2022 on Sexual Violence Crimes and Law Number 16 of

8 Zahrani, S, *Praktik Kawin Tangkap di Sumba dan Implementasi Perlindungan Perempuan Berdasarkan Konvensi Penghapusan Diskriminasi Terhadap Perempuan*, Skripsi, Universitas Katolik Parahyangan, 2024, p 4

9 Zahrani, S. (2024b). *Praktik kawin tangkap di Sumba dan implementasi perlindungan perempuan berdasarkan konvensi penghapusan diskriminasi terhadap Perempuan*

10 Soerjono Soekanto, 2008, *Pengantar Penelitian Hukum*, UII Press, p. 10

2019 on amendments to law No. 1 of 1974 on marriage . Data collection in this study was carried out with literature studies, citing previous studies and other written sources known as literature studies.

RESULTS AND DISCUSSION

1. Capture Marriage Practices In Sumba Perspective Of Human Rights Law

Respect for human beings as creatures who carry the duty of God Almighty to maintain and preserve the nature of creation with full responsibility for the implementation of human welfare is the recognition of human rights. Human rights itself is a basic right that has been brought from the womb as a right obtained as a creature of God Almighty and this right can not be revoked or taken either by individuals or groups.¹¹

Human rights are various kinds of rights that are basically already attached to the essence of being a human being so that without these rights, there can be no realization of his dignity as a human being, therefore these rights cannot be revoked or violated. So, human rights are indeed the highest form of respect for human beings and the fact that if violated becomes a violation of human rights. Respect for Human Rights is also actualized by the state in the form of the rule of law, be it in the form of a constitution or law.

In upholding human rights in human life is so very broad and involves many fields such as philosophical, economic, socio-cultural and even aspects of life related to marriage. In Law No. 39 of 1999 on Human Rights Article 10 guarantees the right of a person to build a family and continue offspring, as it is called that “everyone has the right to form a family and continue offspring through legal marriage” paragraph (1) and in Paragraph (2) mentioned a limitation in using this right, namely “legal marriage can only take place on the free will of the prospective husband and prospective wife concerned, in accordance with the provisions of the legislation”. Thus, every aspect of human life even related to marriage is guaranteed as part of human rights but also in the exercise of these rights must be limited to respect for other human rights as well.¹²

The practice of mating capture is being highlighted by many parties, especially if it is viewed from a human rights perspective. The term mating capture in the Sumba language is Yappa Mawinni (central Sumba dialect) which means capture women, then Piti Maranggangu (East Sumba dialect) which means take in the meeting. As for the term in the dialect of East Sumba, namely Piti Rambangu which means take force. (Wellem, 2004)¹³ From the term refers to the man who devised a plan to escape the bride with the help of one of the woman’s family who supported the marriage.

The bride-to-be was picked up in the middle of the street and taken to her future husband’s House. With animals such as horses tied in front of the house or valuables such as gold stored under a pillow, it becomes a customary marker on the part of the man that the marriage process is in progress. In the current era, this practice is a matter of debate because it is considered a violation of human rights. The law that regulates and discusses human rights related to law No. 39 of 1999, providing firmness regarding marriage that is considered valid is that the bride and groom carry out the marriage according to their respective wishes, both the groom and the bride. In practice that

11 Tagukawi, A. T. D., & Sudibya, K. P. (2021). Praktik Kawin Tangkap di Sumba Ditinjau dari Perspektif Hukum Hak Asasi Manusia. *Jurnal Kertha Negara*, 9(9), 720–730

12 Tagukawi, A. T. D., & Sudibya, K. P.

13 F.D.Welley, 2004, Injil dan Marapu BPK Gunung Mulia, Jakarta. p. 72

happened in the past “the “mating capture” that occurred in Sumba could have been men and women who wanted to form a family with each other but the father of the woman did not agree. While “mating capture” in practice in the current era, often only on the basis of the will of one party, namely the bridegroom.

In one of the cases that June 2020, it happened that one of the women who was captured by a group of men and forcibly taken to the groom’s party house and was going to marry him. Although women rebelled, shouting and crying it was still carried out with the basic reason that traditional marriage that has been going on for generations. From this indication, of course, in practice today it can be said that the “capture marriage” abuses human rights. But it is also necessary to see whether the “marriage arrest” is a violation of human rights or the implementation of “marriage arrest” which actually deviates from the process that has been in force in the past. In the past, the practice of “mating capture” is not just any customary mating process to be carried out. The woman who will be taken to be the bride in the process of “mating capture” is a woman who is a clan from the uncle, who in the marriage system is eligible for pairing.

To carry out this practice was also something that had to be thought about at that time. Apart from having to wait for a good sign from marapu (in the belief of the Sumbanese is a respected spirit, glorified) this practice is also an expensive marriage process because it requires a belis that cannot be negotiated. Belis is a dowry in the marriage process that cannot be separated from traditional rituals and the existence of belis is intended as a tribute to women and marriage itself. In ordinary customary marriage, the belis process will occur bargaining so as to arrive at an agreement on the amount of belis that the man must give to the woman. But in “mating capture” there is no bargaining, whatever is asked by the woman must be given by the man.

Belis in addition to a sign of respect for women, also as proof of a man was able and independent in his life.¹⁴ Moreover, the context of marriage in the Sumba people is very concerning, involving and has become a matter also of parents, extended family, and ancestors. So by doing the practice of “mating capture” is tantamount to risking the good name of the extended family and ancestors.¹⁵ Therefore, if anyone wants to carry out” mating capture “ should think long. In the process of the practice of” mating capture “ in the current era is more often seen as a practice that is very poorly prepared and sometimes even very contain coercion and violence. This is also what sometimes causes fear and trauma in women who are taken by “mating capture”.

From the data there were twenty cases in 2009, one case in 2013, 2016, and 2017 and 2019 and 2020 with two cases each. The practice of” mating capture “ which is still being carried out several times has finally received a response from various parties, be it church institutions, Human Rights Institutions and even from Indigenous communities in several villages in Sumba. From the perspective of human rights law, it is clear that any act that incites physical and spiritual torture and fear in a fellow human being is a violation of human rights.

In Article 1 of Law No. 39 of 1999 on Human Rights, providing an understanding related to human rights violations is any act of a person or group of people including state officials either intentionally or unintentionally taking or revoking human rights. There is no exception in that case for fellow human beings to commit acts that deprive

¹⁴ Steven, Christofan. “*Pengaruh Belis dalam Masyarakat Sumba*”. Jurnal Insight Psikologi Universitas Muhammadiyah Jember, Vol.15, No.2 (2019), p.209

¹⁵ Kleden, Dony. “*Belis dan Harga Seorang Perempuan Sumba*”. Jurnal Studi Budaya Nusantara1, No.1 (2017) : p. 24-34

them of their human rights. Similarly, the practice of “mating capture” becomes an act that deprives a person of their human rights if it is done by force and violence. Moreover, there are indications that customary practices in the current era have shifted from pure customary practices and are no longer in accordance with the purpose and process of implementation that should be. Coupled with a written statement from the Marapu Indigenous people in Kampung Tarung that “mating capture” with violence is a form of customary abuse. This statement is also based on the noble thought of the Sumbanese that the woman (mawinne) is symbolized by the feminine organ (mamuli), which means it is the entrance to the womb and the nature of female affection. Moreover, women are considered quite an important subject in terms of the development of a region. Therefore, there should be in any form of marriage is not allowed any element of violence or coercion that often does occur on the part of women.

2. Legal Implications Of Forced Marriage As Violence Against Women

a) The Context of Legal Pluralism in Southwest Sumba after the enactment of Law No. 12 Of 2022 On The Crime Of Sexual Violence.

The practice of mating capture is well known to the people of Southwest Sumba. But in the past, the main goal was more on matchmaking. This is because in the past there were communication and transportation difficulties while parents wanted their daughters to get a safe and known partner, if possible from their family or people they knew. From the old communication process there is a conspiracy, the parents of men and women already know each other, and the daughter was taken forcibly, brought and married to the person who had also been introduced before. (Kleden, 2017)¹⁶

This matchmaking is also done to maintain family relationships, that is, usually the son will marry the daughter of his mother's brother or vice versa, a daughter will marry the son of her father's brother, and also to maintain the essence of the relay of position (strata), wealth and big name. But the current matchmaking that occurs has violated or no longer fits the initial motivation where the main goal is for their daughters to get a safe mate, and to maintain family relationships, and also maintain the essence of the relay of position (strata), wealth and big name. But instead make women as a parent's debt.

The practice of mating capture that is happening now is not a tradition or culture of Southwest Sumba Limbu Kembe Village, which is where when a man sees that a woman suits him or likes him then performs mating capture, but a practice that develops by sheltering behind cultural claims in order to avoid legal action. Based on the results of research obtained in the field, the practice of catching marriages that occur now is not a custom or culture, but the practice of catching marriages that are carried out continuously repeated, norms in the practice of catching marriages that develop and take refuge behind Customs in order to avoid legal actions that violate human rights that are carried out in religious values, manners, and decency in people's lives. Mating capture is now more akin to kidnapping and humiliating women, women are captured and forced to marry unwelcome, even unknown men.¹⁷

b) Juridical Implications of Forced Marriage as a form of Violence Against Women

¹⁶ Kleden, D. (2017). Belis dan Harga Seorang Perempuan Sumba (Perkawinan Adat Suku Wewewa, Sumba Barat Daya, NTT). *Studi Budaya Nusantara*, 1(1), 24–34,

¹⁷ Kleden, D. (2017). Belis dan Harga Seorang Perempuan Sumba (Perkawinan Adat Suku Wewewa, Sumba Barat Daya, NTT). *Studi Budaya Nusantara*, 1(1), 24–34

Marriage is a very important legal event for humans with various legal consequences. Marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty God, which must be carried out according to their respective religions and must also be recorded according to applicable laws and regulations.

The Sumba tribe's tradition of forced marriage is a crime of humanity that results in acts of sexual violence that the victim experiences a loss of constitutional rights that appear to be contrary to positive law because the rules in the Marriage Law, The Human Rights Law, the 1945 Constitution, the Child Protection Law and other laws concerning women's rights are not implemented how they should be. The implementation that the arrest marriage is done by coercion and is not approved by the women has been contrary to the principle of marriage law according to law no. 1 of 1974 as amended and updated Law Number 16 of 2019 on marriage (hereinafter abbreviated as the Marriage Law) with the purpose of marriage is to form a happy and eternal family.¹⁸

Coercion against women will not be able to create a happy family. Forcing a woman to marry someone she doesn't like can lead to mental or psychological problems. Mental or psychological disturbance of women in a household will not be able to create a happy and eternal family. A broader criminal law perspective explains that any person subjected to deprivation and or arrest by another person against his will can be categorized as kidnapping. Kidnapping laws can be used even if the restraint is substantial enough to interfere with the victim's freedom, the perpetrator will be punished under most kidnapping laws.¹⁹ Detention / kidnapping in Indonesia is regulated in Article 328 of the Criminal Code (KUHP) which reads : "Whoever takes away a person from his place of residence or temporary residence with the intention of unlawfully placing that person under his or her power or the power of another person, or to place him or her in a state of misery, shall be punished for kidnapping with a".²⁰ The Marriage Act clearly states that in a marriage it is necessary to prepare the conditions of the marriage.

If viewed from the terms of the Marriage Act of marriage, marriage arrest is not in accordance with Article 6 paragraph 1 which reads Marriage must be based on the consent of both prospective bride and groom and Paragraph 2 which reads to carry out a marriage that has not reached the age of 21 (twenty one) years must obtain permission from both parents. According to the provisions of Article 2 of the Marriage Law, as *ius constitutum* has formulated legal norms regarding legal marriage, namely :
1) marriage is valid if it is done according to the laws of each religion and belief.
2) each marriage is recorded according to the prevailing laws and regulations.

According to the provisions of Article 2 of Law No. 1 of 1974 on marriage. There are 2 (two) kinds of marriage requirements, namely material requirements and formal requirements. Material conditions are conditions that exist and are inherent in the parties to the marriage, these material conditions are called subjective conditions. While the formal requirement is the procedure or procedure for marriage according to religious law and the law is also called objective conditions.

When referring to the provisions of Article 2 of Law No. 1 of 1974 on marriage, along with the theoretical basis of the legal requirements of marriage can be found several things, namely in the practice of Piti Maranggangu found that the legal requirements of marriage in terms of substantive requirements found that the approval of marriage

18 Anshori, A. G. (2011). *Hukum perkawinan Islam: perspektif fikih dan hukum positif. (No Title)*, p. 37

19 Joshua Dressler, *Encyclopedia of Crime & Justice*, Second edi. (New York, N.Y: Macmillan Reference USA, 2002)

20 Handoko, D. (2018). *Kitab undang-undang hukum pidana*. Hawa dan AHWA

is only based on the agreement of the customary institutions not from the personal prospective husband and wife.

Provisions of Article 6 paragraph (1) of the Marriage Act, basically the terms of marriage according to Article 6 paragraph (1) of the Marriage Act provide a guarantee that there will be no forced marriage in the community. This provision is appropriate considering that the issue of marriage is actually a private matter of a person as part of human rights. Therefore, it should be when this marriage affair is more left to the wishes of each individual to determine their own choices who will be his life partner in marriage. This choice should really be done freely without any coercion from any party.²¹

The practice of Piti Maranggangu found that the bridegroom first caught (took) the bride and stayed with the men and then carried out the customary procession through the process of replacement. Women who are already in the power of men do not need approval whether they agree to be taken or not, the customary law of Sumba Island only requires a replacement based on customary law so that the obligation of consent does not come from the bride but comes from the customary device. So this is very contrary to the provisions of Article 2 of the Marriage Act. The consent of the parties to the marriage becomes the main thing because the marriage law adheres to the principle of marriage based on voluntariness or freedom of will (without coercion).²²

Marriage is a human right. Therefore, a marriage must be based on the willingness of each party to be husband and wife, to accept each other and complement each other, without any coercion from any party.²³ A marriage that is not based on the consent of both parties to the marriage can be used as a reason to cancel the marriage. This principle is emphasized in Article 6 paragraph (1) of the Marriage Law which determines that marriage must be based on the consent of the bride and groom. Based on the principle of freedom of Will of the parties, the practice of Piti Maranggangu if viewed from the side of the Marriage Act. The marriage may be annulled by the parties if these conditions are not met. The tradition of arresting women who are not given the opportunity to determine who they will marry is a case of human rights violations.

This makes women oppressed and not infrequently mating capture accompanied by violence. Criminal law in Indonesia prohibits the practice of kidnapping, but the cultural context of Sumba the tradition of kidnap mating is a legal marriage procession. This makes a confusion for the people of Sumba and law enforcement officials in Sumba. However, the tradition of mating capture should be stopped because it oppresses women. (Budi, 2021a)²⁴ When associated with patriarchy, mating capture is a tradition established by the patriarchy. Patriarchy leads to the subordination of women and causes a historical pattern of systematic violence against women.²⁵ Mating capture positions the woman as a party that is lower than the man, this can be seen that the woman does not have the right to choose which man she will marry. Only the male party is considered in the process of this arrest awin. Of course, the tradition of mating

21 Riduan Syahrani, 2013, *Seluk Beluk dan Asas-Asas Hukum Perdata*, Alumni, Bandung, p. 56

22 Rosdinar Sembiring, 2017, *Hukum Keluarga: Harta-Harta Benda dalam Perkawinan*, Rajawali Pers, Depok, 45.

23 Syahrani, *Seluk Beluk dan Asas-Asas Hukum Perdata*, p. 23

24 Astrid Budi Ati, "Tinjauan Kriminologis Budaya Nusa Tenggara Barat Tradisi Kawin Tangkap (Piti Rambang) Criminological Review of West Nusa Tenggara Culture Marriage Tradition (Piti Rambang)," *Jurnal Fundamental* Vol. 10, No. 1 (2021): p. 81-96

25 Dressler, *Encyclopedia of Crime & Justice*, 1699.

capture strongly oppresses women and illustrates the superiority of men over women. (Budi, 2021b)²⁶

In its application, marriage arrest is contrary to the Criminal Code Article 332 paragraph (1) which reads “guilty of running away a woman is punishable by a maximum imprisonment of nine years, whoever takes away a woman by deception, violence or threat of violence, with the intention of ensuring his control over the woman, both inside and outside the marriage. With this, the perpetrators of marriage arrest should be charged with imprisonment in accordance with these provisions. Marriages that do not comply with the conditions or do not meet the requirements contained in the marriage law can be canceled, because this is further regulated in Article 22 of the Marriage Law, which confirms that marriages can be canceled, if the parties do not meet the conditions for marriage.”²⁷

c) mitigation strategies and the role of the government in the settlement of Capture mating practices

Law enforcement against perpetrators of mating capture still faces various obstacles, especially because of the strong dominance of patriarchal culture in Sumba society. In this social structure, men have a dominant position in the family and their voice is often more heard in the decision-making of society. As a result, many victims are reluctant to report their cases for fear of social pressure or threats from the perpetrator’s family. This condition shows that local social and cultural norms still have a great influence in determining how an action is considered to be able or not to be brought into the realm of law. Therefore, effective countermeasures are needed to eliminate this practice. One of the important steps that can be taken is to increase socialization about women’s rights and the legal impact of the practice of mating capture. The government and law enforcement officials should be more active in conducting legal counseling to the community so that they understand that marriage arrest is a violation of human rights and can be subject to criminal sanctions.

In addition to the legal approach, it is also important to build stronger protection mechanisms for victims, such as Safe House provision and Legal Aid Services. With the active participation of various parties, the practice of marriage arrest containing elements of coercion and exploitation can be categorized as a criminal offense and get more serious attention in the national legal system approach to education and empowerment of women should also be a priority. Gender equality-based education is an important key to changing people’s mindset so that they no longer consider mating capture as a justified habit. On the other hand, the victim is also thirsty to get psychosocial support in order to recover from the trauma and return to living a good life.

But in reality, the majority of families of victims of mating capture in Southwest Sumba prefer the traditional family settlement. Based on interviews with local Adat Chiefs, the settlement was made through the assistance of Roto Mbarapu (the oldest adat leader) as a mediator between the families of the perpetrators and the victims. If the marriage continues, it will be agreed upon the amount of belis (dowry) by mutual agreement. However, if it is not continued, the perpetrator will be subject to a customary fine in the form of giving animals (such as horses), and the victim can reciprocate as a symbol of acceptance of forgiveness, although the gift is not mandatory. This tradition

26 Astrid Budi Ati, “Tinjauan Kriminologis Budaya Nusa Tenggara Barat Tradisi Kawin Tangkap (Piti Rambang) Criminological Review of West Nusa Tenggara Culture Marriage Tradition (Piti Rambang),” *Jurnal Fundamental* Vol. 10, No. 1 (2021): p. 81–96.

27 Dian Kemala Dewi, “Tradisi Kawin Tangkap Sumba dan Prespektif Undang-Undang RI Nomor 1 Tahun 1974 Tentang Perkawinan,” *Law Jurnal* Vol. 2, No. 2 (Maret 1, 2022). P.114,

ends with the recognition that the relationship between the perpetrator and the victim has become a family relationship (kaka-adik).

There are also customary stages that are passed if the marriage continues, namely: (1) the stage of notification from the man to the woman's family through an indigenous confidant; (2) the stage of proof and apology through the Giving of animals; (3) the stage of entry request, which is a family agreement; (4) the stage of traditional mats in the form of handing over belis; and (5) the religious stage, especially for those who embrace certain religions or local beliefs such as Marapu. The reasons for the victim's family choosing the customary route include: (a) the practice is considered part of a respected culture; (b) the importance of family settlement; (c) the victim is considered "tainted"; and (d) the existence of a family relationship between the perpetrator and the victim so that it is not possible to report their own family to the law enforcement.

CONCLUSION

The practice of captive marriage that occurs in Southwest Sumba has undergone a shift in meaning from the family-based matchmaking tradition to a form of violence against women that is full of coercion and rights violations. If in the past this practice was based on family agreements and the purpose of maintaining family relationships, now mating is often carried out unilaterally by the man without the consent of the woman. In the context of national law, especially after the enactment of Law Number 12 of 2022 on criminal acts of sexual violence (TPKS law), this practice can be categorized as a crime of coercion into marriage. In addition, marriage arrest meets the criminal elements of kidnapping and deprivation of liberty as provided for in articles 328 and 332 of the Criminal Code, as well as contrary to the principle of consent in the Marriage Law.

The impact of the practice of mating capture not only concerns the violation of the law, but also exerts severe social and psychological pressure on the victim. Many women are victims of prolonged trauma, loss of educational opportunities, to exclusion from the social environment because they are considered "already polluted". Pressure from family, community, and cultural norms discourages them from reporting or fighting for their rights legally. As a result, women are increasingly marginalized and perceived as objects, not subjects who have rights and free will. This shows that mating capture is a form of gender-based violence that harms the dignity and integrity of women as individuals

Law enforcement against captive marriage faces serious challenges due to the strong influence of patriarchal culture and the tendency of the community to resolve cases through customary channels. Although some victims' families prefer customary settlements such as fines or granting belis, this often does not concern justice for victims. Therefore, the response strategy should include legal education to the community, the involvement of Indigenous leaders in cultural reform, as well as the provision of protection and legal assistance for victims. The government must affirm that no tradition can justify the violation of the law or the oppression of women, and that legal pluralism must be governed in a balanced way by promoting the protection of human rights, in particular the right of women to choose a life partner freely and without coercion.

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