

## Forced Marriage in the Perspective of Indonesian Marriage Law (Case Study of Forced Marriage in Indonesia)

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### Abstract

Living in groups in a group is called society, then by human nature which is created by classifying male and female gender, one will attract each other and unite themselves in marriage bonds, law is needed to regulate marriage to create order in society. Visible law in the form of laws, jurisprudence, customs, practices, certificates, and treaties. Indonesia, which has several religions and ethnic groups, is sure to find out about the rules that must be followed to create a family. All the differences in marriage methods, whether according to customs, religion or conventions, produce a uniform in social life, cultural aspects that accompany marriage in each region. In addition to all the religions that the people of Indonesia accept, based on this background, then it is the creation of the problem that can be drawn as the bleeding tradition in different regions in Indonesia according to Law No. 1 of 1974. This paper uses standard legal research methods. The results of the discussion is that it can be concluded that forced marriage has fulfilled the pillars of Islam according to what the couple who are partners in forced marriage adhere to. However, when looking at forced marriage from the point of view of the Marriage Law, some of the principles in the Marriage Law have been violated by the perpetrators of forced marriage, a man and a woman who are going to into marriage to be in their minds. and mature physically, in the sense that those who are about to be married have thought carefully about going to the stage of marriage of their own free will without any coercion.

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### Introduction

Living alone without other people in a place is not the nature of humans as living beings, Cicero in his thoughts said that humans have the nature of zoon politicon, they always live in groups in a group called society, then with human nature which is created by classifying male gender men and women, each other will attract each other and will unite themselves in marriage bonds.<sup>1</sup> For that we need a law that regulates marriage in order to create order in society. Law is not the only norm that is owned by a society, there are other norms besides legal norms, namely norms of decency, decency, religious norms, which synergize the decency order.<sup>2</sup> Tangible law in the form of laws, jurisprudence, customs, habits, doctrines, and agreements. Continental European countries, including Indonesia, rely more on codification of laws resulting from a similar set of rules into a book that is arranged according to a certain systematic. During the Dutch colonial era, the form of statutory regulations was contained in one of the *Burgerlijk Wetboek* (hereinafter referred to as BW).

After BW comes into effect, the legal form of marriage is listed therein, apart from BW there are other marriage laws that apply simultaneously, namely *Huwelijks Ordonantie Christen Indosesiars S 1933 N0 74 (HOCl)*, *Regeling op de Gemengde Huwelijken S 1898 Number 158 (GHR)* due to the large number of customary laws that owned by the people of Indonesia, as well as the existence of several religions professed by the nation's children, has a great influence on the institution of marriage. For indigenous groups, the Dutch colonial government deliberately allowed them to live with their original legal order, namely customary law, as well as regarding aspects of marriage, indigenous people still use their respective customary laws, and for indigenous groups who embrace Islam carry out their marriage laws in accordance with His religious teachings are based on the *Al-Qur'an* and *Hadith*.

The enactment of Law no. 1 of 1974 (hereinafter referred to as the Marriage Law) according to the constitutional mandate which ended the era of pluralism, and the enactment of the Marriage Law, the previous marriage provisions were no longer valid. The Indonesian nation is a pluralistic nation, pluralism can be seen from the many religions that are recognized by the government and guaranteed to exist, as well as the customs that apply to various tribes in Indonesia, regulating and teaching marriage procedures.<sup>3</sup> This picture occurs in Indonesia, which consists of several religions and tribes. There must be rules that must be obeyed to form a family. All differences in marriage procedures, both according to custom, religion and norms adhered to, produce a unity of uniformity in social life, cultural aspects that accompany the continuity of a marriage in every

<sup>1</sup> Isnaeni, 2016, *Hukum Perkawinan Indonesia*, Refika Aditama, p 3

<sup>2</sup> Isnaeni, *ibid*, p 3

<sup>3</sup> Isnaeni, 2016, *Hukum Perkawinan Indonesia*, Refika Aditama, Bandung, p. 5

region and every religion adhered to by the people of Indonesia, are natural wealth of various cultures that are integrated into intact frame.

One of the marriage traditions that occurs in several areas, which has become customary in some areas, is forced marriage. Forced marriage is a tradition where a man and a woman are united in a marriage institution by arresting the couple and then being forced to marry based on the customs or rules that exist in the area. The general principles contained in Law no. 1 of 1974 consists of several main points, namely the purpose of marriage, legality of marriage, the principle of monogamy, minimum age limit, balanced rights and position of husband and wife, and convoluted divorce. Based on the provisions of the principles contained in the Marriage Law, several problems regarding the implementation of marriages in several regions that apply the "forced marriage" tradition, based on the phenomenon of captive marriage, how is this implemented according to the Marriage Law?

### Method

This type of research is normative-empirical research, using secondary data (from the literature) and supported by primary data based on field research, such as observations, interviews. Basically legal research within the scope of empirical normative research is to examine and evaluate the effectiveness of a norm in the process of enactment and operation of the norm in society so that it is concluded that this normative-empirical legal research is a type of legal research research that is supported and complemented by empirical data.<sup>1</sup> Therefore, this study will use research sources in the form of legal materials that are used with the aim of analyzing applicable law, then explaining various issues and legal facts and other symptoms related to mixed marriages that occur in several regions in Indonesia based on the Indonesian Marriage Law and then analyze it in order to obtain a complete and comprehensive picture of the problem under study.

### Discussion

Several regions in Indonesia apply the unregistered marriage tradition, with different methods and characteristics of circumcision. One of the characteristics of unregistered marriage is the tradition of marrying a woman and a man without going through the usual marriage process. Some areas that have unregistered marriage traditions include Kabalutan Village implementing the unregistered marriage tradition, the unregistered marriage tradition in Kabalutan Village, Tojo Una-Una District, where men and women are arrested together in one place, with one condition, namely past curfew, the couple will soon be married by traditional leaders and local community leaders. Because of this tradition, Kabalutan Village was once known as "Widow Village".<sup>2</sup> As previously mentioned, in Kabalutan Village there is a tradition which is a norm that lives and develops in the community. If a man and a woman are caught together after 12 at night, traditional leaders and community leaders will get married immediately, resulting in many marriages that are not based on mental and physical maturity, resulting in many divorces.<sup>3</sup>

Apart from Kabalutan Village, the tradition of catching marriage also exists on the island of Sumba. The tradition of the marriage contract (*paneta mawinne*) is referred to as a wedding procession, this procession occurs without the consent of either party. The capture marriage procession is a type of marriage that occurs not out of love, but only with the consent of both parents, without the knowledge of the prospective bride and groom.<sup>4</sup> There are many motivations behind unregistered marriage, for example because of economic problems and problems of influence from the family. Related to economic problems, this is usually due to debts, and it is not uncommon for women to be ransomed or for family reasons. So that the existing kinship relations are not broken, it is necessary to carry out marriages between two different tribes<sup>5</sup> with captive marriages in Kabalutan Village. The method or strategy used in a *paneta mawinne* marriage is that the prospective woman will be ordered to go to the market or to another public place and in a predetermined public place there are already several men waiting to catch or kidnap her, after being caught they are immediately transported on horseback. and brought to the groom's house. Although at the time of arrest, the would-be woman panicked and screamed for help, as this was all prearranged and a known strategy, no one was surprised and tried to help extricate her from being kidnapped. After the kidnapped woman arrives at the house of the candidate she doesn't know herself, there is a follow-up process in which the woman's family comes and looks for her child who was recently kidnapped. The presence of the abducted woman's family is part of the strategy itself.<sup>6</sup> The next process after this strategy is successful is the discussion about when traditional marriages and how to buy them. The woman who is the target

<sup>1</sup> Irwansyah, Ahsan yunus, 2020, *Penelitian Hukum, pilihan metode & Praktik Penulisan Artikel*, Yogyakarta, Mirra Buana Media, p.42

<sup>2</sup> Nurul miqat, Manga Patila, Bustamin dg Kunu, Hasil penelitian Dipa FH Untad 2022

<sup>3</sup> Nurul miqat, Manga Patila, Bustamin dg Kunu Hasil Penelitian, ibid

<sup>4</sup> Dony Kleden, Belis dan Harga seorang Perempuan Sumba (perkawinan Adat Suku Wewewa, sumba Barat Daya, NTT, Studi Budaya Nusantara, 2017, Vol 1 No 1, p. 29

<sup>5</sup> Elsiati Tangu, Elly Esra Kudubun, Alvianto W. Utomo, kawin tangkap (studi sosiologi tentang makna dan prkatik kawin tangkapdi Desa Mareda Kalada, Kec. Wewewa timur, Kab Sumba Barat Daya), Equalita, Vol.3 issue 2, Desember 2021. p. 182

<sup>6</sup> Dony Kleden, opcit. p. 29

of this captive marriage only surrenders to the wishes of her parents and extended family.<sup>1</sup>

There are also other forced marriages in Sumenep Regency, in Pragaan Laok Village to be precise. Tangkep cabin<sup>2</sup> is a marriage process between two bride and groom which is carried out by village officials, and it is carried out suddenly, this marriage is carried out because of allegations that the bride and groom have had a relationship that violates religion. As a result, the community agrees that the couple must be married immediately.

Apart from that, basically the tangkep cabin in Sumenep where the couple is a couple of young people where their relationship is without the consent of their parents, which results in the couple planning to do things that are not wanted by their respective parents or guardians, such as married without guardians, eloped and others as well as by the community and local officials who knew the relationship between the two couples, immediately forcibly married them by presenting a guardian from each party.<sup>3</sup>

### **Unrecorded marriages in cases of forced marriage**

Forced marriages in many areas are unrecorded marriages.<sup>4</sup> Neng Djubedah gives the understanding that an unregistered marriage is different from an unregistered marriage, an unregistered marriage is a valid marriage, fulfills the pillars and conditions according to Islamic law, meaning that the marriage does not contain an element of "intentionally" which accompanies one's intention or intention not to register the marriage, in other words, is not or has not been recorded at the Office of Religious Affairs (KUA). Meanwhile, marriages not recorded contain bad intentions or intentions from the husband, especially those who intend the marriage "on purpose" is not recorded. How many traditions of caught marriage exist in Indonesia, are marriages that are not recorded. Most of the marriages that have taken place in Kabalutan Village have not been recorded, let alone the marriages that have occurred because of caught marriages.

Apart from captive marriage, there is another local wisdom that supports the condition of Kabalutan Village where there are many widows.<sup>5</sup> There is a culture that develops in the village, that women who are married to outsiders of the island, the married woman cannot be taken out of the village, even if they have children, so there are options given to the husband if he wants to leave the island, namely to stay or divorced.

The marriages that were carried out were only siri marriages or the marriages were not recorded, which was enough to be married off by the local chieftain, as a result if you don't want to continue the marriage, all you have to do is agree to separate. This is the custom in the village of widows, marriage is easy, divorce is also easy.<sup>6</sup> Likewise with tangkep marriages<sup>7</sup> "The legal status is valid according to religion but according to government regulations they do not have a marriage certificate, this also includes negative impacts both for themselves and their offspring"<sup>8</sup> do not have official documents as is the case with those issued by religious institutions, namely the Office of Religious Affairs.

Even though the marriages of captive marriages are marriages that are not recorded, the captured marriages that occurred in Kabalutan Village, where most of the adherents are Muslim, have fulfilled the elements of the pillars of marriage. In the legal actions of marriage, differences result from the non-fulfillment of the pillars and conditions of marriage. If the pillars are not met, then the legal consequences are null and void, but if the conditions are not met then the marriage can be cancelled. Marriages that are not recorded but fulfill the pillars that apply to Muslims in Indonesia, then the marriage is still valid, because the pillars determine the legality of an act or legal event<sup>9</sup> Article 2 paragraph (1) of the Marriage Law stipulates that a marriage is legal if it is carried out according to law each of their religions and beliefs. The elucidation of Article 2 paragraph (1) of the Marriage Law explains that "with this formulation in Article 2 paragraph (1), there can be no marriage outside the law of each religion and belief, according to the 1945 Constitution.

### **Forced Marriage is contrary to the principle contained in the purpose of marriage according to the Marriage Law**

One of the principles contained in Article 1 of the Marriage Law, namely the purpose of marriage, based on Article 1 of the Marriage Law, namely to form a happy and eternal family (household) Belief in One Almighty God, meaning that the Marriage Law requires that marriage last a lifetime and divorce is only a last resort. Forced marriage is contrary to the principle of the purpose of marriage where the purpose of marriage contained

<sup>1</sup> Donny Kleden, opcit. p. 29

<sup>2</sup> Imam Mukhlis, *Praktek Kabin Tangkep di Desa Pragaan Laok, Kecamatan Pragaan Kabupaten Sumenep*, 2010, p. 37

<sup>3</sup> Imam Mukhlis, ibid p. 37

<sup>4</sup> Neng Djubaedah, 2012, *Pencatatan Perkawinan dan Perkawinan Tidak Dicatat, Menurut Hukum tertulis di Indonesia dan Hukum Islam*. Jakarta Sinar Grafika, p. 153

<sup>5</sup> Nurul miqat, Manga Patila, Bustamin dg Kunu ibid

<sup>6</sup> Nurul miqat, Manga Patila, Bustamin dg Kunu, op cit

<sup>7</sup> Imam Mukhlis, op cit

<sup>8</sup> Imam Mukhlis, ibid p. 56

<sup>9</sup> Neng Djubaedah, op.cit

in Article 1 of the Marriage Law is a physical and spiritual bond between a man and a woman to become husband and wife with the aim of forming a happy and eternal family based on Belief in One Supreme God, meaning that a man - a man and a woman who are going to get married and become a husband and wife must be mature physically and mentally, so that later after becoming a husband and wife they can realize the purpose of marriage properly without thinking of divorce. In Islamic marriages adheres to the principle of voluntarism, that the couple who will marry is not due to coercion, but voluntarily to carry out the marriage and become husband and wife, in addition to the voluntary principle, the principle of consent is also contained in Islamic marriages, where Islamic marriages respect human rights in Regarding marriage, which has been determined since the beginning of Islam, namely the 7th century AD, in choosing a marriage partner, women must be given the freedom to choose through a statement whether or not to accept a man's proposal.<sup>1</sup>

Marriage should not be imposed by coercion but on the will of the parties, namely the man and woman who will become husband and wife. Article 1 of the Marriage Law formulates that "marriage is an inner and outer bond between a man and a woman to become a husband and wife to form a happy and eternal household (family) based on Belief in One Almighty God." The meaning of this article is that a man a man and a woman who are going to get married should be a partner who is going to step into marriage, not a couple who is forced to marry. The purpose of marriage clearly determines that everyone has the right to choose their marriage partner freely, without any coercion, because marriage is forever, couples who are going to marry must be partners who are not forced because they will live as husband and wife forever because the purpose of marriage is eternal. The freedom to choose a partner can be seen from the hadith narrated by the congregation except Muslims, from Khansa' bint Khidam Anshariyah, as it has been mentioned that her father had married her while she was a widow, but she did not like the marriage, then she came to Rasulullah SAW, then Rasulullah SAW annulled the marriage.<sup>2</sup>

### Conclusion

Forced marriages that occur in several regions in Indonesia actually fulfill the pillars of Islam as adhered to by couples who are married couples. However, when viewed from the perspective of the Marriage Law, forced marriages, several principles contained in the Marriage Law were violated by the perpetrators of forced marriages. Among them is that a man and a woman who are going to get married must be mentally and physically mature, in the sense that those who are going to get married have really thought carefully about going to the next level of marriage, of their own volition without any coercion.

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<sup>1</sup> Neng Djubaedah Ibid, p. 101

<sup>2</sup> Neng Djubaedah, ibid, p. 102