



Comparison of Law Between Merariq Traditional Marriage Law and Marriage Law Number 16 of 2019

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Abstract

Marriage Law in Indonesia is regulated in Act Number 1 of 1974 concerning Marriage and undergoing changes to Act Number 16 of 2019, which regulates how the norms and principles of marriage are considered and recognized by the Indonesian state. The purpose of marriage in Indonesia as regulated in Act Number 1 of 1974 article 1 states that: "Marriage is an inner and outer 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. one". The problem that arises then is whether the existing and developing customary marriages before the enactment of the Marriage Law can be recognized by the Indonesian state. The types of customary marriages that are not in accordance with the objectives, norms, and principles of marriage according to the Marriage Law are one of them is the Merariq Traditional Marriage Tradition, which from this merariq marriage tradition results in many early marriages or child marriages according to the legal age threshold. Law Number 16 of 2019 which is the main discourse of this study looks at the dimensions of Marriage Law through the eyes of the Merariq Indigenous Marriage of the Sasak Tribe. This study uses a normative juridical approach where this approach is carried out by tracing the norms that live in Indonesian positive law. Whereas the cases raised by merariq traditional marriages have caused many legal problems, furthermore, the high level of child marriage is due to the absence of a social safety net for anyone who wants to carry out a merariq marriage so that there is no legal protection and certainty for the parties to the marriage, especially women who are in a vulnerable position, Therefore, the implementation and enforcement of national marriage law must be considered again in its enforcement and implementation so that there is no legal vacuum where national law is not present in the community.

Keywords: *Marriage; Traditional Marriage; Merariq Tradition*

Introduction

The Indonesian state guarantees the right of every citizen to form a family and continue their offspring through a legal marriage, besides that the state also guarantees the rights of all children to survive, grow and develop and children have the right to be protected by the state against violence and discrimination as referred to in paragraph (1). has been mandated in article 28E of the 1945 Constitution of the Unitary State of the Republic of Indonesia. In accordance with the mandate of the constitution of the Republic of Indonesia that all Indonesian citizens have the right to form a family and continue their offspring through legal marriage, and the state has the responsibility to protect these rights. But,

Marriage in Indonesia is protected as a form of implementation of the 1945 Constitution by Law no. 1 of 1974 and its amendments, namely Law no. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage. After a change through Law No. 16 of 2019, the age threshold requirement for someone who wants to get married, both male and female, must be at least 19 years old. The purpose of this arrangement is to prevent marriage at an early age which is rife in the regions. Marriage at an early age that is rampant in Indonesia is considered very disturbing.¹

Indeed, the right of all citizens to marry, the right to build a family, the right to continue offspring must be protected by the state, however, there are certain things that everyone must pay attention to if they want to get married. First of all, when we talk about law, especially law that is in the private sphere, it cannot be separated from the discussion about the people who live and live or agree on the legal rules that live in it. "Organized groups that are stable in nature with self-government possessing both material and immaterial objects"²In simple terms, customary law communities have an understanding as an autonomous society in which the legal norms formed and run by indigenous peoples live and develop. The acculturation of middle eastern culture in the joints of Indonesian culture has become a definite consequence in the field of language and literature, many words are absorbed from Arabic.³

The Sasak tribe who inhabits the Lombok area has and carries out a traditional marriage tradition called Merariq or more specifically, if a Lombok man wants to marry or the man has a desire for the opposite sex, then the man must do what the people of Lombok do. said as "kidnapping" to the prospective bride of the man earlier. During the kidnapping process the man takes the girl to his house or to a place that only he knows, without the knowledge of the girl's family or relatives. Merariq in the Sasak language is a verb which is generally defined as a series of actions taken before the marriage takes place. where this series begins by escaping other people's girls from the supervision of their parents or guardians and this is at the same time an initial procession of a marriage. There are various interpretations in interpreting the term merariq, including those who interpret merariq as a process of escaping, while others interpret it as an act of stealing, while in Sasak language itself merariq is defined as stealing or stealing a girl from someone's supervision. old.⁴

Merariq is one of the common ways of marriage in the Sasak community. The merariq tradition itself emerged and came from the influence of Hindu-Balinese cultural traditions after the Balinese Kingdom expanded its power to the Lombok region in the 17th century, where the practice of merariq often caused problems because this was done by stealing or stealing other people's girls or running with them. a young couple without the knowledge of the girl's parents, family or other parties, which can

¹Ana Latifatul Muntamah, Dian Latifiani, Ridwan Arifin, *Pernikahan Dini Di Indonesia: Faktor Dan Peran Pemerintah (Perspektif Penegakkan dan Perlindungan Hukum Bagi Anak)*, Widya Yuridika Jurnal Hukum, Vol. 2, No.1, Edisi Juni 2019, Hlm. 2

²Ter Haar, *Beginnselen en Stelsel Van het Adatrecht*, J.B. Wolters, Jakarta, 1950, Hlm. 16

³Siti Muslifah, *Akulturasasi Budaya Timur Tengah Ke Indonesia dan Pengaruhnya dalam Kesusastraan (Studi Kasus pada Serat Centhini)*, Jurnal CMES Vol. 6 Nomor 1, Edisi Januari-Juni, 2013, Hlm. 111

⁴Farida Ariany, "Adat Kawin Lari "Merariq" Pada Masyarakat Sasak (Studi Kasus di Kabupaten Lombok Tengah)". Jurnal Sangkareang Mataram Vol. 3 Nomor 3, Edisi September, 2017, Hlm. 10

hinder the merariq marriage.⁵The term merariq comes from the word in the Sasak language "running" which contains 2 (two) meanings. The first meaning is "run". The second meaning is the whole series of the implementation of a marriage according to the Sasak tradition itself, or in other words Lari means a way.⁶

Running away is the first act of a young man either with or without consent to steal a girl he wants from the supervision and power of her parents or family members who are guardians of the girl to take the girl out of her family environment.⁷So in simple terms the practice of merariq is a series of processes that have been preserved and carried out until now by the Sasak people in order to respect the traditions of their ancestors, which is a series of pre-wedding activities or a procession of a Sasak man when he wants to propose to a girl. However, in Bustami Saladin's opinion, there is a dualism of views related to the tradition of this merariq. Where the first view of this tradition has been carried out for generations even before colonization by the Balinese and Dutch people. While the second group has the view that the merariq tradition is not a product of the original (genuine) marriage culture of the Sasak community itself.⁸

This series of pre-wedding merariq processions is a procession where Sasak men kidnap a Sasak tribal girl to be taken from the girl's house and also from the power of the girl's parents. The series of abduction processions carried out by Sasak men are considered a noble act and show their seriousness in establishing relationships with Sasak tribal girls. The practice of the Merariq tradition is then not as smooth as what the indigenous people want. In the course of its journey, many parties are considered to take advantage of this tradition so that forced marriage processes occur where the girl feels under pressure/coercion in agreeing to marriage through the merariq process, according to the researcher, this situation makes the girl in a vulnerable position. Also, In its journey, this tradition was then misused by several parties to carry out early marriages. This is also accompanied by the increasing divorce rate in the Sasak community.

Regarding the age threshold for marriage, it must be considered. Because if someone is not considered old enough to get married, it means that someone is not considered mature enough to bear the responsibilities that will arise from a marriage. The agreement of the two parties who will carry out the marriage, because marriage is a legal act and will result in a legal consequence, the marriage must be carried out by the parties with reference to Article 6 paragraph of Law Number 1 of 1974: marriage must be based on the approval of the prospective bride and groom.⁹And if one of the two parties is still under the age of 21, then the consent of the parents or guardian of the parties must be there.

According to Nur Yasin, where the merariq tradition is closely related to the honor (prestige) of a family from the girl's side as a form of achievement and not a form of default on a marriage plan. This merariq tradition also indicates that there is a sense of inferiority (inferiotas) from a Sasak girl, namely the powerlessness of the Sasak girl for all the actions she experiences.¹⁰

⁵Ibid.

⁶Drs. M. Nur Yasin, M.Ag, *Hukum Perkawinan Islam Sasak*, UIN Malang Press, Malang, 2008, Hlm. 151

⁷Tim Departemen P dan K, *Adat dan Upacara Perkawinan daerah Nusa Tenggara Barat*, Depdikbud, Jakarta, 1995, Hlm. 34

⁸Bustami Saladin, *Tradisi Merariq Suku Sasak Di Lombok Dalam Perspektif Hukum Islam*, Al-Ihkam : Jurnal Hukum dan Pranata Sosial 8, Nomor 1, Edisi Juni, 2013, Hlm. 24

⁹Aceng A.R. dkk, *Pengantar Hukum Perdata Materi dan Perkembangannya*, Alumni, Bandung, 2011, Hlm. 47

¹⁰Mohamad N. Yasin, *Kontekstualisasi Doktrin Tradisional Di Tengah Modernisasi Hukum Nasional: Studi Tentang Kawin Lari (Merari') Di Pulau Lombok*, Istinbath : Jurnal Hukum Islam, Vol. 4, Nomor 1, 2006, Hlm. 73–75.

Problem Formulation

1. Does the merariq tradition meet the requirements for a valid marriage under the Marriage Law?
2. What are the legal consequences of the merariq tradition according to the Marriage Law and its impact on the people of Lombok?

Research Objectives

To find out the legal problems that occur in the practice of marriage from the merariq tradition which then raises the pros and cons of the existence of the tradition in terms of the perspective of national marriage law based on Law number 16 of 2019, as well as knowing how the practice of the merariq tradition is carried out to the legal consequences. caused to the Lombok community.

Research Uses

The usefulness of this research is theoretical and practical, namely:

1. Theoretical Uses

- a. This research is expected to be an exercise and learning in applying and developing the theory obtained in order to produce a scientific analysis.
- b. This research is expected to be able to provide general input and contribution in the fields of law, custom, marriage, especially those related to marriage law, especially regarding the study of issues related to the implementation of marriage based on customary law and the implications arising from the perspective of national marriage law.

2. Practical Use

- a. This research is expected to provide benefits to all communities in general and indigenous peoples in particular related to traditional traditions, especially in terms of marriage
- b. This research is expected to contribute ideas on marriage and the legal consequences arising from marriage as well as how to see the dimensions of marriage from a responsible and sustainable perspective.

Research Methods

Research is a scientific activity related to analysis and construction, which is carried out methodologically, systematically and consistently. Methodological means in accordance with a certain method or method, systematic is based on a system, while consistent means the absence of contradictory matters within a certain framework. This research method uses a normative juridical method where in seeking conclusions from a legal phenomenon that occurs this research relies on studies of laws and document studies.

Results and Discussion

Customary marriage law is a set of customary regulations that regulate the forms of marriage, the ways of application, how the marriage ceremony is carried out and also regulates the way in which marriages break up. Indigenous marriages in indigenous communities can be a matter of relatives, families, alliances, individuals. The procedure for marriage in Indonesia is regulated in Article 2 of the

Marriage Law which states that a marriage is declared valid if the marriage is carried out based on the law of each religion and the marriage is registered at the Office of Religious Affairs and at the Civil Registry Office in its territory. An Ijab Kabul which is carried out based on the applicable provisions must be carried out by an adult (baligh),

The implementation of the unification of various regulations in the field of marriage in Indonesia occurred when the Marriage Law was enacted. The existence of this unification means that all Indonesian people in carrying out marriages must refer to the Marriage Law as the applicable regulations in the territory of Indonesia. Article 66 of the Marriage Law states that for every marriage and all matters related to marriage, it is regulated based on the Marriage Law that has been established. Therefore, with the enactment of the Marriage Law, all the provisions regulated both in the Civil Code, the Christian Indonesian Marriage Ordinance, mixed marriage regulations, and other regulations governing marriage, as long as it has been regulated in this Marriage Law, it is declared invalid. The Sasak people strictly forbid marriage if the two prospective brides have close blood relations. Articles 35 and 36 state that the assets acquired during the marriage are joint assets, while each of the assets is handed over to the husband and wife for their allocation. Then in article 37 regulates the distribution of joint assets in the event of a marriage breakup due to divorce where the distribution is submitted according to the law of each husband and wife. Articles 35 and 36 state that the assets acquired during the marriage are joint assets, as for the respective assets to be handed over to the husband and wife for their allocation. Then in Article 37 regulates the distribution of joint assets in the event of a marriage breakup due to divorce where the distribution is submitted according to the law of each husband and wife. Articles 35 and 36 state that the assets acquired during the marriage are joint assets, as for the respective assets to be handed over to the husband and wife for their allocation. Then in Article 37 regulates the distribution of joint assets in the event of a marriage breakup due to divorce where the distribution is submitted according to the law of each husband and wife.

As for the customary marriage law of the Sasak Tribe, the distribution of assets after the marriage is terminated is first resolved by customary deliberation until one of the parties disputes it, if they do not find a new agreement using a court decision. Likewise, in the provisions for maintaining and educating children as a result of the termination of marriage, concerning matters of engagement, the giving of wedding gifts and the forms and ceremonies of marriage. In this merariq tradition, Article 7 paragraph (1) of Law no. 16 of 2019 concerning Amendments to the Marriage Law which determines the age of marriage, so that child marriage automatically cannot be justified, but in the practice of the merariq tradition, which does not see the age of the prospective bride and groom, they still carry out marriages under the age of five. age. In addition, in Article 19 of PP No. 9 of 1975 which mentions the reasons for divorce, which automatically prohibits divorce outside of these reasons, and this is still often violated in the merariq tradition.

In the Marriage Law which regulates the terms of marriage, it does not take from the legal principles of customary marriage, especially merariq. The practice of merariq itself is contrary to article 31 of the Marriage Law, namely where there is a difference in position between husband and wife in the practice of merariq. Then in Article 6 it states that a valid marriage must be based on the approval of the two prospective brides while in the merariq tradition of indigenous peoples who determine whether the marriage can continue or not so that this marriage decision is contrary to the principles of the Marriage Law itself.

The Impact of the Merariq Marriage Tradition on the Sasak Tribe Society underage or child marriage in the Lombok Sasak community. This needs special attention regarding the marriage of minors which is rampant in the Sasak tribal community. Regarding education about marriage, that marriage is not just a husband-wife relationship, but there are many consequences that arise from marriage itself. For example, the responsibility for children, especially in the indigenous community, marriage does not only

include the union of the two parties who carry out the marriage, but the unification of both sides of the family from the boy and girl.

As the researchers explained earlier, the practice of merariq facilitates or provides a social system for the practice of marrying and divorcing. It is easy for the parties to enter into marriage without an adequate social safety net, which is the main reason that the practice of marriage and divorce has an easy way to proliferate. It should be underlined that the practice of marriage and divorce has a high potential in placing the girl in a vulnerable position.

Conclusion

Merariq Marriage Judging from Law Number 16 of 2019 concerning Massive Marriages, the widespread practice of merariq marriage in the Sasak people of Lombok must be viewed and treated objectively and honestly. If you look at this merariq marriage through an anthropological approach, indeed the practice of merariq marriage is a form of cultural expression of the Sasak people that has been carried out from the time of the ancestors until passed down to the current generation. As a cultural identity, the merariq tradition must be protected and preserved by the Sasak people. The tradition of merariq or escaping this couple is a legal act. Proposals or proposals are not known in the Sasak Tribe Community because of the assumption of the girl's family, because applying is the same as asking which is interpreted the same as asking for goods,

The Impact of the Merariq Tradition on the Life of the Sasak Tribe Community, but the practice of merariq has a continuing impact that we cannot turn away from this phenomenon. Merariq in the future makes it easier for some people to get married early because of the lack of education about marriage and the responsibility for the results of marriage which then results in increasing divorce rates at a young age. Divorce has the result of abandoning children from marriages whose growth and development are finally hampered because they live in a house that is no longer intact. Likewise with protection for girls who in this case are in a very vulnerable and inferior position in front of men.

With the enactment of legal unification in the national marriage law, namely through the Marriage Law, the previous provisions regarding marriage, as long as they have been regulated in this Marriage Law, are declared no longer valid. In particular regarding the provisions contained in the Merariq customary marriage law, in which there are some similarities to those regulated by the Marriage Law and provisions that are contrary to the Marriage Law, these provisions are not recognized by Positive (National) Law. Therefore, the practice of merariq marriage in accordance with the provisions of the Marriage Law is not recognized by the National Marriage Law.

"The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law."

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