

Women as Victims of Sexual Violence in the Practice of Capture Marriages in Central Sumba



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ABSTRACT: Sexual violence is a serious social and public health problem affecting the health of women (DeGue et al., 2013). Forced marriage is a form of sexual violence according to law number 12 of 2022 concerning criminal acts of sexual violence in Indonesia hereinafter referred to as the TPKS Law. This study aims to find out and examine the settlement of the practice of Capture Marriage based on the theory of gender equality. This research is an empirical legal research with a legal sociology approach. The results of the research show that in the process of resolving the Capture Marriage case, the community always chooses to resolve it according to custom, although there are some who report to the police, it does not run to completion but stops in the middle of the process. The Capture Marriage case itself shows that there is no gender equality due to the dominating patriarchal culture and the settlement process in Central Sumba is not in accordance with the theory of protection and law enforcement because law enforcement officials tend to ignore the interests of victims and are more subservient to custom.

KEYWORDS: Capture Marriage, Gender Equality, Sexual Violence.

I. INTRODUCTION

Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage is a manifestation of the Indonesian state as a state of law as set forth in Article 1 paragraph (3) of the 1945 Constitution and a state based on God Almighty as contained in Article 29 paragraph (1) of the 1945 Constitution and is a manifestation of human rights. Marriage is a part of human rights as stipulated in the 1945 Constitution of the Republic of Indonesia Article 28B paragraph (1) that everyone has the right to form their own family and continue their offspring in a legal marriage bond. Apart from being regulated in the 1945 Constitution, the right to marriage is also regulated in Law Number 39 of 1999 concerning Human Rights Article 10 paragraph (1) regarding the right to form a family and continue offspring within a legal marriage bond and paragraph (2) which states that a legal marriage is a marriage that carried out based on the free will of the prospective husband and wife themselves based on the provisions of the applicable laws and regulations. Marriage is also a legal act that has legal consequences. For a form of marriage that has been carried out by a legally valid man and woman, the consequences of the marriage will also be considered legally valid. (Waluyo, 2020) .

A valid marriage, apart from having to be carried out according to their respective religions/beliefs, must also be based on applicable laws by fulfilling the conditions of marriage, namely those contained in Article 6 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. One of the conditions of marriage that must be fulfilled based on the provisions of Article 6 paragraph (1) is that there must be the consent of both prospective brides underlying the marriage, but in reality at this time there are still marriages that are carried out without the consent of both prospective brides, as is the case in the practice of Capture Marriage on Sumba Island, East Nusa Tenggara Province.

On Sumba Island, East Nusa Tenggara Province, there is a custom or practice in the marriage process called Capture Marriage which is a rough translation of the marriage practice that deviates from the actual customary tradition of "*Yappa Mawinni*" (in the local language of Central Sumba). The custom of this marriage practice is carried out by capturing or forcibly bringing the desired woman to marry while in her house, market, public street or in other crowded places, without any previous love relationship or "mutual feelings", to show the man's masculinity at the expense of the woman's body and self. (Natar, 2013: vii) . When the man manages to bring the woman to his residence, the woman will be tied up and kept in a room so that she cannot escape and often at that time the woman will be directly fucked. The consequences of the practice of Capture Marriage are not only physical violence but also sexual violence against women who become victims. The phenomenon of gender-based violence is pervasive around the world, experienced by some one in three women in their lifetimes. The elimination of such violence has been increasingly recognized as a priority for the international community (Klugman et al., 2017). Given pervasive gender inequalities that almost universally affect women's unequal access to resources and rights, a majority of GBV victims are women (Castañeda Carney et al., 2020) .

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Sexual violence is also a type of violence that is classified into two broad categories based on the identity of the abuser, namely: familial abuse occurs when the perpetrator is still related by blood and is part of the victim's nuclear family, while extra familial abuse occurs when the perpetrator is not from the victim's family or does not have a blood relationship with the victim. Based on this explanation, sexual violence in the form of Capture Marriage is classified as extra familial abuse because the perpetrator of violence is not from the victim's family. an come from the victim's family. (Noviana, 2015).

Sexual violence is regulated in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, hereinafter referred to as the TPKS Law. Article 4 paragraph (1) of the TPKS Law states that there are 9 (Nine) types of criminal acts of sexual violence, one of which is forced marriage (Article 4 paragraph (1) letter e of the TPKS Law). Forced marriage as a form of criminal sexual violence in relation to the practice of Capture Marriage is further mentioned in article 10 paragraph (2) of the TPKS Law which regulates forced marriage in the name of cultural practices. Forced marriage in the TPKS Law is an ordinary offense, which means that without a complaint the authorities, in this case the police, can immediately process the case of Capture Marriage that occurs. In the event that a criminal act of sexual violence fulfills the elements of forced marriage as stipulated in the law, it can be sanctioned in the form of imprisonment for a maximum of 9 (nine) years and/or a maximum fine of Rp 200,000,000.00 (two hundred million rupiah).

In addition to the TPKS Law, the Indonesian state also has several regulations that can be related to the social inequality that occurs in the Capture Marriage tradition such as The Convention on the Elimination of All Forms of Discrimination againts Women (CEDAW) which was ratified by Indonesia with Law Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women, articles related to Human Rights in the 1945 Constitution, Law No. 39/1999 on Human Rights, Law No. 5/1998 on the Ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as other policies that contradict existing social facts but until now have not been addressed or brought to the public domain.

The regulation of sexual violence as outlined in various national and international laws and regulations is based on the fact that sexual violence has a very negative impact on victims, both physically and psychologically. The physical impact of sexual violence on victims can be seen from the occurrence of wounds, bruises, and other physical health problems. The impact of sexual violence on the victim's psychology can be seen from the occurrence of psychological disorders which can be in the form of emotional disorders, behavioral disorders and cognitive disorders. (Anindya et al., 2020) .

The people of Sumba strongly uphold their customary traditions and culture so that in an effort to resolve the practice of Capture Marriage until now it is still enforced according to custom. The victim's family tends to prefer to resolve the issue of Capture Marriage through customary means while the victim himself who feels unfair asks for help from the authorities to be resolved with positive law, so it is not uncommon for norm conflicts between positive law and customs to occur in efforts to resolve Capture Marriage cases. Women are placed as the weakest party in this marriage practice, the most disadvantaged, and their voices are not heard. Victims of Capture Marriage when viewed further not only experience physical and sexual violence but also experience psychological violence with pressure from various parties, as well as from unfavorable circumstances.

II. RESEARCH PROBLEMS

Based on the above background, the problem formulation in writing this article is: How is the settlement of the practice of Capture Marriage on Sumba Island by considering aspects of legal protection for its victims?

III. RESEARCH METHOD

This research is an empirical legal research with a legal sociology approach. Sources of data in this study are primary data and secondary data. Primary data was obtained directly from respondents, namely victims/survivors of the Capture Marriage case, while secondary data consisted of primary legal materials and secondary legal materials which were analyzed using legal analysis methods. Primary legal material According to Peter Mahmud Marzuki in (Marzuki, 2015) is binding legal material. The primary legal materials used in this research and writing are Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, Law Number 39 of 1999 concerning Human Rights, and TPKS Law. Secondary legal materials according to Soerdjono Soekanto and Sri Mamudji in (Soerdjono Soekanto, 2015) is legal material that complements and strengthens primary legal material. Secondary legal materials used in this research and writing include books and journals. The approach in this research is a legal sociology approach. The legal sociology approach is intended to find out about the reasons why victims and families of victims do not report cases that occur to the police and prefer to settle by custom, whether it is in accordance with the theory of gender equality.

IV. RESULT AND DISCUSSION

1. Regional Monograph of Central Sumba Regency and Marapu Culture

Sumba is an island in the province of East Nusa Tenggara, Indonesia. The island covers 10,710 km², and its highest point is Mount Wanggameti (1,225 m). Sumba is bordered by Sumbawa to the northwest, Flores to the northeast, Timor to the east, and Australia

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to the south and southeast. The Sumba Strait lies to the north of the island. To the east lies the Sawu Sea and the Indian Ocean lies to the south and west. On Sumba Island itself there are four regencies namely West Sumba Regency, Southwest Sumba Regency, Central Sumba Regency, and East Sumba Regency. The largest city is Waingapu, the capital of East Sumba Regency. Central Sumba Regency consists of 6 sub-districts, namely Mamboro, Katikutana, Umbu Ratu Nggay Barat, Umbu Ratu Nggay, Umbu Ratu Nggay Tengah, and Katikutana South and 65 villages/wards with the capital being Waibakul which is located in Katikutana District. Central Sumba Regency has a land area of 187.87 km².

Sumba is one of the islands in East Nusa Tenggara known as Tana Marapu or Bumi Marapu. There are three main things that need to be considered to know the order that exists in Sumba society which are interrelated with each other because they are closely related to what is their cultural identity, namely the order based on religious belief (Marapu), the order based on residence (Paraingu), and the order based on family ties (Kabihu). (Soeriadiredja, 2016:1). These three orders together constitute the guidelines, values, or rules in Sumba's social life. The original Sumbanese culture in all its forms is a manifestation of the traditional beliefs of the Sumbanese people, namely Marapu, which is an ancestral heritage that has holistically underpinned the entire Sumbanese community order. This then becomes the cognitive map of the Sumbanese people in living various aspects of their socio-cultural life. (Djawa & Supriyono, 2014:1) .

For people who still practice Marapu rituals, they understand that human life must always be adjusted to the rhythm of the movement of the universe and always strive to keep the orderly relationship between humans and nature unchanged, besides that humans must strive for a balanced relationship with the supernatural forces that exist in every part of the universe. If humans always maintain good relations or cooperation with others, as well as between humans and nature, then balance and order are maintained over time, this also applies between living humans and the spirits of dead humans.

One of the Sumbanese cultures related to several cases of Capture Marriage practices is the tradition of inbreeding between "sons of om and sons of aunt" (cousins) which is allowed. This tradition is carried out with the aim of strengthening family relationships. The marriage of the son of an uncle and the son of an aunt or in the local language of Central Sumba called Ana Loka can be done with the provision that the boy is the son of the aunt and the girl is the son of the uncle, so a Sumbanese woman may marry her son to the daughter of her brother. In general, inbreeding is unnatural for most people, but it is normal and legitimate for the Sumbanese. This tradition is not an obligation that Sumbanese people must adhere to, but if there is a relationship between "om's son and aunt's son" that is being established, then for Sumbanese people the relationship is very permissible.

2. Settlement Process According to Central Sumba Custom

Based on the results of an interview with Mr. Antonius Umbu Laiya Sobang, S.Sos. (January 11, 2023) as a Social Worker at the Central Sumba Regency Women's Empowerment and Child Protection Social Service, the majority of victims and families of victims of Catch Mating prefer to resolve the issue of Catch Mating through customary/family means. This is based on three important reasons, the first is because the community considers this incident as part of the culture. The culture and traditions of the Sumbanese people have existed since ancient times and are still respected today. Capture Marriage itself has been practiced for decades regardless of its implementation, which has deviated from the actual tradition, so that people generally cannot distinguish which is the Yappa Mawini tradition and which is Capture Marriage because there has been a mixture in practice. The second reason is closely related to the culture of the Sumbanese people who strongly uphold a sense of family, so that in any problem will always be tried first to be resolved by custom / family, if through customary channels it cannot be reconciled or resolved then the parties will use positive legal channels. The third reason is that in some cases of Capture Marriage, the perpetrators and victims are still related (cousins), which in Sumba customs the relationship of "uncle's son and aunt's son" or in the local language of Central Sumba called Ana Loka is very permissible as previously explained, so the victim's family thought that it was very unlikely to report their own family to the police, so custom was chosen to resolve this case rather than reporting to the police.

Based on the results of research in the field using direct interviews with respondents, it is known that there are 2 (two) types of Capture Marriage, namely Capture Marriage which is "intentional" or based on the will of the perpetrator and the victim (the victim knows she will be kidnapped) without informing the victim's parents beforehand, and the second is Capture Marriage which is indeed a crime without the victim knowing, including kidnapping and sexual violence. The "intentional" case of Capture Marriage was carried out because the perpetrator and the victim wanted the customary process to be expedited because the customary marriage itself takes a long time with months and even years between one process and another, in this case between the perpetrator and the victim there was already an established relationship (dating). That is why the perpetrator and the victim agreed for the perpetrator to kidnap and bring the victim to the perpetrator's house so that they could immediately get married through the Capture Marriage process. In the case of Capture Marriage, because the victim herself wanted this and was already living under the same roof as the perpetrator, the marriage was processed according to Sumbanese custom, with the provision of a belis.

Based on the results of the research for cases of Capture Marriage, which are indeed crimes, most of them are not reported to the police because they are considered part of the culture so that the victim's family chooses to settle by custom, 1 (one) victim has tried to ask for help from church leaders to help report it to the authorities because the victim's family continues to insist on being married off while the victim is not willing also because the village where this Capture Marriage occurred is in a rural area, 1 (one) other case the victim's family immediately reported it to the police and in several other cases it was reported by residents to the Central Sumba

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Regency Women's Empowerment and Child Protection Social Service to be assisted in resolving it. The similarity between the two types of Capture Marriage is that whether it is reported or not, the end result is the same, namely that it is still resolved by custom, even though it was reported to the police, in the end the parties chose the customary route to be reconciled.

The customary settlement process is carried out accompanied by the Wunang (customary head/elder) on the customary mat as the mediator of the two families (the perpetrator's and victim's families). In this customary settlement process it will be determined whether the marriage will continue or not, if it is continued then the amount of belis that must be fulfilled by the male family will be determined, the amount of belis in Capture Marriage is equated to the amount of belis in marriage in general, which is based on the agreement of both parties so there is no distinction. In the event that the marriage is not continued, the perpetrator will be subject to customary fines, namely having to provide animals in the form of horses with the amount determined depending on the severity of the mistake and the consequences caused, and a machete as a form of apology. The price of one horse itself varies depending on size, for a small horse is valued at Rp. 6,000,000.00 (six million rupiah) to Rp. 7,000,000.00 (seven million rupiah), a medium-sized horse is valued at Rp. 8,000,000.00 (eight million rupiah) to Rp. 9,000,000.00 (nine million rupiah) and the price of a large horse starts from dozens to tens of millions of rupiah. The victim can then reciprocate by giving 1 (one) piece of woven fabric as a sign that the victim has forgiven the perpetrator, but this reciprocation is not mandatory so if the victim does not give anything in return then it does not

matter. The price of one piece of Sumba woven fabric itself varies depending on the complexity of the motif and the coloring material used, for West Sumba woven fabric has a price range of around Rp. 250,000.00 (two hundred and fifty thousand rupiah) per sheet while East Sumba woven

fabric the price per sheet starts from Rp. 2,500,000.00 (two million five hundred thousand rupiah)

to Rp. 5,000,000.00 (five million rupiah). East Sumba woven fabric has a more expensive price because it uses natural dyes and takes a very long time in the manufacturing process. After the victim received the gift from the perpetrator, the two families were considered reconciled and the relationship between the perpetrator and the victim became a brother-sister relationship.

Based on the results of interviews with Mr. Antonius Umbu Laiya Sobang, S.Sos., until now the Central Sumba Regency Social Service for Women's Empowerment and Child Protection is collaborating with the Social Service for Women's Empowerment and Child Protection from 3 (three) other districts on Sumba Island to overcome cases of Catch Mating so that they do not occur again in the future and emphasize that this is not part of the culture of Sumba people. Efforts have ranged from seminars to field deployments to villages to educate the public that Tangkap Kawin is a criminal offense and since 2022, perpetrators of Tangkap Kawin will be subject to Article 10 paragraph (2) of the TPKS Law with a maximum imprisonment of 9 (nine) years and/or a maximum fine of Rp 200,000,000.00 (two hundred million rupiah).

3. Women as Victims of Sexual Violence in the Practice of Capture Marriages Based on Gender Equality Theory

Violence against women is the most pervasive yet least recognized human rights violation in the world. It is also a profound health problem, sapping women's energy, compromising their physical health, and eroding their self-esteem. In addition to causing injury, violence increases women's long-term risk of a number of other health problems, including chronic pain, physical disability, drug and alcohol abuse and depression. (L. Heise*, M. Ellsberg, 2002). Our focus on gender-based violence against women is not to imply that women are never violent against men. The rates and forms of violence, including intimate partner violence, vary widely across cultures (Russo & Pirlott, 2006)

Based on the theory of gender equality put forward by Ann Oakley, differences in behavior between men and women are socially constructed, namely differences created by humans through a long social and cultural process. (Suparyanto and Rosad, 2020:32). In the author's opinion, Sumba's highly patriarchal culture also plays a major role in terms of gender inequality. In Sumbanese culture, men are given position, dominance and various kinds of privileges compared to women who are considered the property of men. This understanding that women are the property of men results in men feeling free to treat women as they please, in the end women are in a weak position, suffer and receive unfair treatment. Patriarchal culture as a culture centered on male values is the basis for the proliferation of gender-biased behavior, this behavior ultimately places women in a subordinate and marginal position so that they can be controlled. To a certain extent, violence will arise when there is an assumption that women exceed the limits of cultural control. Based on the results of an interview with Rev. Dr. Asnath N. Natar, M.Th., (February 19, 2023) as a Feminist Theology Lecturer at the Faculty of Theology at Duta Wacana Christian University, she said that Capture Marriage is a culture that harasses women's bodies so it must be eliminated. Women in Capture Marriage do not have control over their own bodies and not only bodies but also sexuality, referring to the rape that is immediately carried out at night after the victim is arrested. In the view of gender, this is certainly unfair to women because women's rights are forcibly taken away. Rev. Dr. Asnath N. Natar, M.Th., also explained that in the theological view the body is the temple of God, but by committing sexual violence it is tantamount to destroying the temple of God itself.

Margaretha Ririmasse says that culture has forced many women to tend to silence cases of violence experienced for a variety of reasons, including the view that violence against women is common. (Ririmasse, 2009:10).

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In the opinion of N. Prihatini Ambaretnani, the development of violence against women will never stop as long as the patriarchal system is still used as a reference for thinking, behaving and acting, but the patriarchal system is also not easy to erase or change because it is part of the culture and is in all areas of community life. (Ambaretnani, 2019:59).

Most Sumbanese women reject the practice of Capture Marriage that still occurs today because this marriage practice is no longer in accordance with real customs. The perpetrators of Capture Marriage use the Sumba marriage customs to commit violence against women. Therefore, this marriage practice must be eliminated because it is not in accordance with customs and the times. Gender equality must be realized, especially for women who also have the right to express opinions just like men.

V. CONCLUSIONS

The settlement process is carried out in a customary manner accompanied by the Wunang (customary head/elder) as the mediator of the two families (the perpetrator's and victim's families). In this customary settlement process it will be determined whether the marriage will continue or not, if it is continued then the amount of belis that must be fulfilled by the male family will be determined, the amount of belis in Capture Marriage is equated to the amount of belis in marriage in general, which is based on the agreement of both parties so there is no distinction. In the event that the marriage is not continued, the perpetrator will be subject to customary fines, namely having to give animals in the form of horses with the amount determined depending on the severity of the mistake and the consequences caused, and a machete as a form of apology which will then be reciprocated by the victim by giving 1 (one) sheet of cloth and / or 1 (one) pig as a sign that the victim has forgiven the perpetrator, but the provision of this reply is not mandatory so that if the victim does not give anything in return it does not matter. After the victim accepts the gift from the perpetrator, the two families are considered to have reconciled and the relationship between the perpetrator and the victim becomes a sibling relationship (brother-sister).

ACKNOWLEDGMENT

Thank you to Universitas Atma Jaya Yogyakarta and the lecturers who have assisted from the beginning to the end of writing this journal.

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