



JURIDICAL REVIEW OF THE IMPLEMENTATION OF EARLY MARRIAGE (MERARIQ KODEQ) IN SASAK CUSTOMS IN REVIEW OF THE MARRIAGE LAW (STUDY IN LEPAK VILLAGE, SAKRA TIMUR SUB-DISTRICT, EAST LOMBOK DISTRICT)

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Abstract

The purpose of this study is to determine the form of early marriage arrangements (merarik kodeq) based on the Marriage Law and to identify the factors that lead to the implementation of early marriage (merarik kodeq) in Sasak customs in Lepak Village, Sakra East District, East Lombok Regency. This study will serve as a basis for further research on this topic. The study employed a normative empirical research method, which entailed a review of laws and regulations and interviews with community members, village officials, religious leaders, traditional leaders, hamlet heads, and their staff. The results of the study are presented in the form of an implementation model for early marriage (merariq kodeq), which is a custom or habit of the community, especially the Sasak tribe. This practice is not common and cannot be denied, therefore the village government is unable to take any action. To prohibit it completely would be to ignore the Sasak language term "Betungkem rarely," which means that if there is a case such as early marriage, it can only be accepted with a yes, whether it is going forward or backward. In essence, this is just a mediator in this matter.

Keywords: *The institution of marriage, the age at which it is contracted, and the customs and traditions surrounding it are all factors that influence the decision to marry.*

Abstrak

Penelitian ini bertujuan untuk Untuk mengetahui bentuk Pengaturan perkawinan usia dini (merarik kodeq) berdasarkan Undang-Undang Perkawinan dan untuk mengetahui Faktor penyebab terjadinya pelaksanaan perkawinan usia dini (Merarik kodeq) dalam adat sasak di Desa Lepak, Kecamatan SakraTimur, Kabupaten Lombok Timur sebagai bahan kajian ini. Metode penelitian Normatif Empiris dengan teknik meninjau peraturan perundangan dan Wawancara melalui masyarakat dan pemerintah Desa, Kepala Desa, Tokoh Agama, Tokoh Adat, Kepala Dusun dan jajarannya. Hasil penelitian berupa model pelaksanaan terhadap perkawinan usia dini (merariq kodeq) yang merupakan suatu adat atau kebiasaan masyarakat khususnya suku Sasak yang tidak lazim dan tidak bisa di pungkiri lagi akan keberadaannya sehingga dari pemerintah Desa hanya bisa diam saja mau melarang tidak bisa sepenuhnya dikarenakan dalam istilah bahasa Sasaknya "Betungkem jarang" yang artinya apabila ada kasus seperti pernikahan dini hanya bisa diterima dengan iya saja mau maju salah mau mundur salah yg pada intinya sebagai penengah saja dalam hal tersebut.

Kata Kunci: Perkawinan, Usia dini, Adat atau Kebiasaan.

INTRODUCTION

The Compilation of Islamic Law (KHI), which was disseminated from Presidential Instruction Number 1 of 1991, contains more or less the same. In Article 1, KHI states that "the age limit for marriage is the same as Article 7 of Law Number 1 Year 1974, but with the addition of reasons for the benefit of the family and household." For the benefit of the family and household, marriage may only be entered into by the prospective bride and groom who have reached the age stipulated in Article 7 of Law Number 1 of 1974, namely the prospective husband is at least 19 years old and the prospective wife is at least 16 years old. Thus, an amendment was made to Law Number 16 of 2019, in Article 7 paragraph 1 which states "Marriage is only permitted if the man and woman have reached the age of 19 (Nineteen) years".¹

Teer Haar asserts that "marriage is a matter of kin, a matter of family, a matter of society, a matter of dignity, and a personal matter." He further notes

¹ Yayuk Kusumawati, Dilemma of Legal Dualism in the Case of Merariq Kodeq Sasak Tribe, Vol.1 No.1 (2017), Journal of Sharia and Legal Thought, at <https://media.neliti.com/media/publications/335238>

that in customary law in Indonesia, marriage is not only a customary bond but also a bond of kinship.²

The same can be said of religious affairs, as Van Vollen asserts that "in customary law there are numerous legal institutions and legal rules that relate to the world order outside and above human capabilities."³

In the Qur'an and al-Hadith, there is no specific mention of the minimum age limit for marriage. However, there are general requirements that are commonly known. These include being baligh (of an age where one is considered mature enough to understand the implications of marriage), of sound mind, and able to distinguish between good and bad so that they can give consent to marriage. Additionally, there is the concept of a person's time to get married (*bulugh an-nikah*), which is often referred to as "rusyd." The word "bulugh an-nikah" in the verse is interpreted by different scholars in different ways. This discrepancy can be attributed to the differing interpretations of the relevant texts. The first interpretation is that of intelligence, which is based on the assumption that the review is focused on the mental aspect, as evidenced by a person's attitude and behavior. The second interpretation is that of maturity and the capacity to dream, which considers the outward physical aspects while also focusing on the individual's legal status.⁴

In contrast to the hadith, which describes the Prophet Muhammad's marriage to Aisyah R.A. when she was six years old, the verse and hadith provide opportunities for interpretation. This condition states that the *fuqaha* differ in opinion regarding the age limit of marriage. Child marriage is a complex and controversial issue. Such cases are rarely or very rarely apparent on the surface, but in fact in many regions of Indonesia there are numerous cases of child marriage, which are generally due to the influence of customary law, which is still prevalent.

² Hilman Hadikusuma, *Indonesian Marriage Law According to Legislation, Customary Law, Religious Law*. (Bandung: CV. Mandar Maju, 2007) Pg. 8

³ *Ibid*, Pg. 9

⁴ Zaki Fuad Chalil, *Review of the Minimum Age for Marriage: "A Comparative Study between Jurisprudence Books and Marriage Laws in Muslim Countries"*, (*Mimbar Hukum* VII, No. 26, 1996), p. 70.

According to the customary practices of the Sasak people, marriage contracts have significant legal implications within a particular geographical area or customary environment. Merariq can be referred to as elopement, which is an initial process undertaken by a young man and woman to enter into a marriage that will lead them to happiness. Merariq is a word often used by the Sasak people in running away or eloping, which means the initial action taken by a man to take a woman he wants with the aim of running away and will be hidden in the family home of the third male with the aim of making the woman his wife.⁵ In this case, the practice of Merariq kodeq, which occurs on the island of Lombok, especially in East Sakra District of East Lombok Regency, which occurs frequently and is a problem that until now is still a separate customary custom that reflects existing cultural values, underage elopement (Merariq kodeq) has really spread and is a community in Sasak Muslims.⁶

METHOD

This research utilizes a Normative and Empirical research. normative legal research is doctrinal legal research, referred to as library research or document studies. It is called doctrinal legal research, because this research is conducted or aimed only at written regulations or legal materials.⁷ Sarjono Soekanto and Sri Mamuji explained that normative legal research is "legal research conducted by examining library materials (secondary data). Called normative legal research or library legal research. while Empirical legal research is one type of legal research that analyzes and examines the operation of law in society.⁸ Empirical legal research is a legal research method that serves to see the law in real terms and examine how the law works in the community. because this research examines people in living relationships in society, the empirical legal research method can be said to be sociological legal research.

⁵ John Ryan Bartholomew, *The Wisdom of the Sasak People*. (Yogyakarta: Pt. Tiara Wacana, 2001) p. 173

⁶ Ibid.

⁷ Muhaimin, *Metode Penelitian Hukum*, Cetakan Pertama, Mataram University Press, 2020, Hal 45

⁸ Ibid, hal. 47

RESULTS AND DISCUSSION

A. Regulation of Early Marriage (Merariq Kodeq) Based on the Marriage Law.

The difference between the Indonesian marriage law and the Islamic law taught by Rasulullah SAW needs further study to find a solution to this problem. This is because Indonesia has a majority Islamic society, so the pros and cons of early marriage can be minimized. There are several reasons for limiting the age of marriage in Indonesia. One of them is concern about the country's population dynamics. By implementing an age limit, the government is trying to address the issue of overpopulation and ensure a sustainable future. Furthermore, the lower age limit for women is intended to prevent them from exceeding the maximum number of children allowed within the upper age limit, thus promoting responsible family planning.⁹ From a health perspective, it is understood that underage marriage is a significant risk factor for reproductive disorders in the future, such as cervical cancer. Another perspective, as outlined in the Child Protection Law, is that girls who marry below the age limit are vulnerable to becoming victims of "child trafficking" and economic exploitation. This can have a detrimental impact on children who are only there to study and play.¹⁰

The Compilation of Islamic Law (KHI) defines marriage as a "very strong contract or mitsaqan ghalidzan to obey Allah's commands and carrying it out is an act of worship." This definition is outlined in Article (2). In Law Number 1 of 1974 concerning Marriage, a definition of marriage is provided. Marriage is defined as "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."¹¹

⁹ Subandi, "Prevention of Underage Marriage According to Law Number 1 of 1974," at <https://dahlanforum.wordpress.com/category/renungan/page/2/>.

¹⁰ In "Sheikh Puji, A Perspective on Early Marriage," available at <http://gusbroer.wordpress.com/category/pernikahan-dini>, the author presents a viewpoint regarding the practice of early marriage, offering insights from a religious perspective.

¹¹ The Indonesian Marriage Law, Article 1

B. Marriage according to Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning the Age of Marriage

In Law Number 16 of 2019 Concerning the Amendment to Law Number 1 of 1974 Concerning Marriage, Article I outlines the regulatory amendments to Law Number 1 of 1974 Concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1, Supplement to State Gazette of the Republic of Indonesia Number 3019). The provision in Article 7 is amended to read as follows:

- a. A man and a woman may enter into a marriage when they both attain the age of 19.
- b. In the event of a deviation from the age setting as referenced in paragraph (1), the male and female guardians may petition the court for approval on the grounds of extraordinary earnestness, accompanied by sufficient supporting evidence.
- c. The Court, in its capacity as a granting authority, will consider the opinion of the intended bride and groom prior to making a determination.
- d. The provisions concerning the circumstances of one or both parents of the prospective bride and groom as referenced in Article 6 paragraphs (3) and (4) shall also be applicable to the request for dispensation as referenced in paragraph (2), without prejudice to the provisions referenced in Article 6 paragraph (6).

Article 7, paragraph (1) of Law Number 1 Year 1974 states that "marriage is possible if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years." Young women considering the implications of Article 1, paragraph 1 of the Law on Amendments to Law Number 23 Year 2002 concerning Child Protection may be interested to learn that a child is defined as a person who has not yet reached the age of 18 (eighteen) years, including children who are still in the womb. The Constitutional Court of the Republic of Indonesia has issued Decision Number 22/PUU-XV/2017, in which one of the considerations of the Constitutional

Court in the decision is as follows: "However, when the differential treatment between men and women has an impact on or hinders the fulfillment of basic rights or constitutional rights of citizens, both those included in the group of civil and political rights as well as economic, educational, social and cultural rights, which should not be differentiated solely on the basis of sex, then such differentiation is clearly discrimination." When differential treatment between men and women impedes the fulfillment of fundamental rights or constitutional rights of citizens, including those encompassed by civil and political rights, as well as economic, educational, social, and cultural rights, and is based solely on gender, it can be considered discriminatory.¹²

The amendment to Article 1 of Law Number 1 Year 1974 on Marriage extends the age limit for marriage, thereby improving the norm by raising the minimum age of marriage for women. For this situation, the basic age for marriage for women is the same as the basic age for marriage for men, namely 19 (nineteen) years. The age limit is considered to be mature in body and soul, enabling individuals to enter into marriage and realize the purpose of marriage without ending in divorce. It is also expected that raising the age limit for women to marry above 16 years will result in a lower birth rate and reduce the risk of maternal and child mortality. Furthermore, it can also fulfill children's rights to enhance their development and progress, including parental assistance and providing children with access to the highest possible teaching.

C. Regent of East Lombok Regulation No. 41 of 2020 on the Prevention of Child Marriage

In East Lombok, the 2020 Regent Regulation Number 41 concerning the Prevention of Child Marriage (RPM) states in Article 3, Paragraph 1, that the targets of the RPM are children, parents, families, communities, and all stakeholders. Article 4 states that the prevention of child marriage is carried out

¹² Constitutional Court of the Republic of Indonesia has issued Decision Number 22/PUU-XV/2017

by village governments, parents, children, families, communities, and stakeholders. The background of the emergence of East Lombok Regent Regulation Number 41 of 2020 concerning the Prevention of Child Marriage is that there are many children who marry underage. This practice can risk increasing cases of stunting in newborns, mortality rates, poverty rates, and school dropouts. Furthermore, West Nusa Tenggara is ranked 7th out of 34 provinces regarding the number of child marriages. In East Lombok, the number of child marriages has also increased.

Article 1, paragraph (10) defines the prevention of child marriage as a collective effort undertaken by the regional government, parents, children, and the community. This effort is manifested in the form of policies, programs, activities, social actions, and other initiatives designed to prevent child marriage and reduce the number of child marriages in the region.

D. The implementation of early marriage, or Merariq Kodeq, in Lepak village, East Sakra district, East Lombok regency is the subject of this study. The factors contributing to this phenomenon will be explored.

Early marriage, or merariq kodeq, is defined as a marriage that is carried out under the productive age of less than 19 years. This definition is consistent with the regulations set forth in Law Number 16 of 2019, Article 7, paragraph 1, which outlines the legal age limits for marriage.¹³

Merariq kodeq, or early marriage, is indeed a common practice on the island of Lombok. It is widely acknowledged that this phenomenon occurs frequently on the island, particularly in Lepak Village. Despite the implementation of various measures to address this issue, early marriage continues to be a prevalent practice in the region. The practice of early marriage in Lombok, particularly in Lepak village, is a phenomenon that cannot be prevented. It is a custom that has been upheld by the village government and religious leaders, as well as the broader community. However, it is not a valid

¹³ The Indonesian Marriage Law, Article 7

practice because it does not fulfill the necessary requirements. It is evident that the village government does not necessarily participate in the contract process, as marriages are often conducted in secret with witnesses from the closest family members. This is due to the embarrassment of being known by the public, which could result in ridicule.

In the Sasak language, "betungkem rarely" signifies that the issue cannot be prevented. Consequently, the only viable option is to remain silent and adopt a neutral stance. However, this approach has led to numerous challenges within the community. It has become evident that the issue is not limited to diseases such as malnutrition or stunting, which are well-documented. Instead, it has also manifested in increased divorce rates. This phenomenon is unique to this context and is particularly prevalent in the island of Lombok, where it is inversely proportional to the observed facts. This problem is unique to the island of Lombok, where a small proportion of the population may divorce in accordance with legal procedures. However, this is inversely proportional to the facts that occur in the Sasak community, especially in Lepak Village, where a small proportion of divorces are sufficient to result in the woman being divorced if the word is spoken.¹⁴

The legal age limit for marriage, set at 19 years old for both men and women, as outlined in Law Number 16 of 2019, is insufficient to prevent instances of child marriage in Lombok. This occurred based on the results of an interview with Pak Zak, who stated that there was an underage girl estimated to be 15-17 years old in Lepak Village who recently got married and eventually divorced. What is particularly concerning is that this does not appear to have any impact on the girl's future prospects. The girl's remarriage in the near future marks a return to the status of widowhood. This incident serves to illustrate the importance of family harmony and guidance for children, particularly in the avoidance of such circumstances. The role of parents in the

¹⁴ Mr. Ibnu Zakir was interviewed for this research project. As a village official as well as a religious figure, Mr. Zakir serves the village of Lepak, East Sakra District, East Lombok Regency.

education of their children and the lack of educational factors that contribute to such occurrences are key factors in this regard.¹⁵

The number of cases of underage marriage in the last three years, from 2021 to 2023. (In Lepak Village, Sakra Timur Sub-District, East Lombok District)

NO	Number of Cases	Year/Gender					
		2021/hamlet	JK	2022/hamlet	JK	2023/hamlet	JK
1	3 Cases (Lepak (male), gelogor (Male) dan jorong (Female))		M				
			M				
			F				
2	3 Cases			3 underage (Kondak (Female), Jorong (Female), kondak bongkot (Male))	P		
					P		
					L		
3	3 Cases					3 underage (Jorong (female) dan Kondak (Female))	P
							P
							P
Amount 9 Cases Underage Marriage							

In certain regions of Lombok, including East Lombok, specifically in the Surabaya area, community leaders and Kadus engage in discussions (meetings) with the objective of preventing early marriage. Furthermore, the Tuntang area is not guaranteed to have a marriage book by village officials. There is no specific socialization program aimed at preventing early marriage directly within the community. Instead, it is typically combined with health activities

¹⁵ Ibid.

and other initiatives. Several efforts have been made to reduce the occurrence of early marriage in Lepak Village in the future, including:¹⁶

1. The practice of awiq-awiq has been employed to prevent early marriage by setting a minimum age for marriage. The awiq-awiq establish a minimum age for marriage. For women, this is 19 years of age, while for men it is 21 years of age. Should a couple wish to proceed with marriage beyond this age, the union will be dissolved. In the event that separation is not feasible, the couple will be subject to a fine of 1.5 million rupiahs and reported to the relevant authorities.
2. Efforts to prevent early marriage have been made by the Head of the Religious Affairs Office and village officials, among others. Socialization, though still somewhat incidental, is one of the causes, with budgetary constraints or funding issues being a significant factor. Socialization is conducted by the KUA through various channels, including majlis taklim, marriage advice, and marriage sermons. Furthermore, coordination with the kecamatan regarding youth activities related to early marriage remains sporadic. In the past, there were six pairs of underage brides in Lepak Village. Only two of these pairs could be prevented, namely in Pelepok hamlet with Bungkulan. This was due to the fact that the village government was able to intervene and prevent the marriage of the two brides-to-be. This was because the bride-to-be was acting violently towards the children in her care, carrying out what is known as "belas" (taking children with harsh actions and good reasons).
3. In response to the prevalence of child marriages in the province, the NTB Provincial Government has implemented a series of measures. Among these initiatives, the Governor of NTB has issued a circular letter, numbered 180/1153/Kum/2014. This circular letter emphasizes

¹⁶ In this interview, Mr. Mukti Ali, the Head of Lepak Village, East Sakra Sub-district, in the East Lombok Regency, offers insight into the history and current state of the village.

the significance of establishing the minimum age for marriage at 21 years of age for both men and women, as proposed in Circular Letter No. 150/1138/Kum. To ensure the successful implementation of the policy, it is recommended that all regional work units and regents/mayors throughout NTB implement the marriage age maturation program in accordance with their respective roles and responsibilities, as stated in the circular.

CONCLUSION

Early child marriage represents a significant obstacle for the Indonesian state, impeding the intellectual development of children and their overall growth. Furthermore, all countries and governments have enacted regulations aimed at preventing early marriage. Furthermore, the most recent legal regulations, Law Number 1 of 1974 concerning amendments to Law Number 16 of 2019 concerning marriage age limits, stipulate in Article 7, Paragraph 1 that marriage is only permitted if the man and woman are 19 years of age or older.

Merariq kodeq, or early marriage, is indeed a common practice on the island of Lombok. It is recognized that it often occurs on the island, especially in Lepak Village. From the explanation of informants, it can be seen that this practice is still occurring. Informants have indicated that early marriage in Lombok, particularly in Lepak village, is a practice that is not only accepted but also encouraged by the village government and religious leaders. This custom is viewed as a valid aspect of the community's cultural heritage, despite the fact that it is not in compliance with the legal requirements. Early childhood marriage (merariq kodeq) is a prevalent issue on the island of Lombok, particularly in East Lombok. It is challenging to address because it has become a customary practice within the Sasak community, influenced by various factors such as socialization, the influence of social media, and parental guidance. Despite the existence of numerous regulations governing underage marriage, it persists. Therefore, it is crucial to prioritize human resources (HR) for awareness-raising among individuals.

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