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A LEGAL REVIEW OF CUSTOMARY MARRIAGE IN THE VILLAGE OF GUMANTAR, WITH PARTICULAR REFERENCE TO THE LAW OF MARRIAGE.

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Abstract

This research aims to ascertain the historical and procedural aspects of merarik custom in Gumantar Village, Kayangan District, North Lombok Regency. In order to achieve this, the research will examine the following: "Juridical Review of Customary Marriage in Gumantar Village Viewed from the Marriage Law". Furthermore, the research will investigate the application and legal arrangements pertaining to underage marriage in Gumantar Village. Consequently, the following problems and issues have been identified: (1) What is the nature of Merarik Custom in Gumantar Village, Kayangan District, North Lombok Regency? (2) What are the legal arrangements for underage customary marriage in Gumantar Village, based on Law No. 16 of 2019? The research methodology employed in this study is a combination of normative and empirical research. The approaches utilized include empirical, legal, sociological, and historical methodologies. The findings of this study indicate that customary marriage in Gumantar Village is still largely governed by customary processes. The concept of marriage as defined by custom is of interest not only to the individuals involved in the marriage, but also to the wider community in Gumantar Village. However, there are instances where customary marriages in Gumantar Village deviate from existing regulations due to the prevalence of underage marriages. Nevertheless, this custom should not be abandoned and must still be carried out in a way that traditional leaders and the community are expected to be able to adapt customary law to national law, so that customary law and state law are in harmony.

Keywords: Implementation, Marriage, Custom, Gumantar Village, Regulations

Abstrak

Penelitian ini bertujuan untuk mengetahui bagaimana sejarah dan proses adat merarik di Desa Gumantar Kecamatan Kayangan Kabupaten Lombok Utara. Sehingga penelitian ini mengkaji terkait : "Tinjauan Yuridis Perkawinan Adat Di Desa Gumantar Ditinjau Dari Unang-Undang Perwakinan". Untuk mengetahui bagaimana penerapan dan pengaturan hukum dalam perkawinan dibawah umur di Desa Gumantar. Maka dari permasalahan dan isu tersebut muncul rumusan masalah sebagai berikut: (1) Bagaimana Adat Merarik Di Desa Gumantar Kecamatan Kayangan Kabupaten Lombok Utara? (2) Bagaimana pengaturan hukum dalam perkawinan adat dibawah umur Di Desa Gumantar berdasarkan undang-undang No.16 Tahun 2019? Jenis penelitian yang digunakan dalam penulisan ini adalah penelitian Normatif-Empiris (Gabungan). Pendekatan yang digunakan yaitu pendekatan empiris, peraturan Undang-Undang, pendekatan sosiologis, dan pendekatan historis. Hasil penelitian ini menunjukkan bahwa pelaksanaan perkawinan adat di Desa Gumantar masih sangt kental dengan proses adatnya. Perkawinan dalam artian dan penjelasan adat tidak hanya berkepentingan bagi pihak yang melangsungkan perkawinan akan tetapi bekepentingan juga bagi masyarakat sekitar yang ada di Desa Gumantar, meskipun perkawinan adat di Desa Gumantar terkadang tidak sesuai dengan peraturan yang ada dikarenakan masih banyak perkawinan di bawah umur yang tetap dilangsukan masyarakat adat di Desa Gumantar. akan tetatpi adat tersebut tidak boleh ditinggalkan dan harus tetap dilangsungkan dengan cara para tokoh adat dan masyarakat diharapkan mampu menyesuaikan hukum adat dengan hukum nasional, seingga hukum adat dan hukum negara selaras.

Kata Kunci: Pelaksanaan, Perkawinan, Adat, Desa Gumantar, Peraturan

INTRODUCTION

The concept of custom is an integral aspect of a nation's identity, as it represents the collective consciousness of a people over time. Consequently, every nation on earth possesses its own unique customs, which are often markedly distinct and heterogeneous. This diversity serves as a fundamental pillar of a nation's cultural identity.

The Lombok Sasak tribe is an ethnic group that inhabits the island of Lombok and uses the Sasak language, which has various customs. One such custom is the merarik (marriage) tradition. One of the ways in which the Sasak people carry out marriage is through a practice known as merarik. In this tradition, a man may take a woman of his choosing, who is then hidden in the

home of a third party.[1] This practice is not always in accordance with the existing laws, as it has developed and progressed over time.

In customary law societies, the purpose of marriage is to perpetuate and continue the survival of the customary law society. However, because the systems of each society are different, the emphasis on the purpose of marriage is adjusted to the family system.[2] For example, in patrilineal customs, marriage aims to maintain the lineage of the father, while in matrilineal customs, it aims to maintain the lineage of the mother.

In accordance with Sasak custom, the process of merarik (marriage) is not merely a single event, but rather encompasses a series of lengthy and intricate procedures that may span several months. The merarik tradition comprises several phases, and it is a custom that has been passed down from generation to generation within the existing Sasak indigenous community. According to Sasak tribal customs, there are several ways of entering into marriage, including perondongan (matchmaking), mepadik lamar (kawin lamar), and selarian/kawin lari (merarik). Merarik is the most frequently employed method among some Sasak individuals, as it is regarded as the most polite approach. Merarik is typically reserved for couples who aspire to a serious relationship. Merarik unites two individuals, a man and a woman, who are considered soul mates, into a union that culminates in marriage. However, it is not uncommon for merarik activities to be carried out by young couples who are not yet mentally prepared for such a commitment. This can result in the dissolution of the relationship or divorce. Nevertheless, the community continues to uphold its traditions, as they are deeply embedded in the cultural fabric.

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[1] For further information, please refer to Hilman Syahrial Haq, "Merarik Customary Marriage and Selabar Tradition in the Sasak Tribal Community," Journal of Perspectives, Vol. 21, No. 3, September 2016, p. 158.

[2] For further information, please refer to the article by Wiratni Ahmadi, "The Rights and Obligations of Women in the Family According to Law No. 1 Year 1974 on Marriage," published in the Pro Justitia Law Journal, Vol. 26, Number 4, October 2008, p. 374.

In traditional merarik marriages, the man is responsible for secretly taking a woman and bringing her to his family's house. This action is intended to maintain the man's pride for successfully bringing his prospective woman. However, many people exploit this tradition, including many young people who may be considered underage. The article states that when bringing a girl to his house, the parents will accept the marriage, even though the child brought is still in school or underage. This is due to the lack of knowledge about underage marriage, which results in the couple being married without considering the long-term consequences. This is a significant factor in the high rate of divorces among young couples. In the context of merarik marriages, parents are generally willing to accept their child's choice of partner, regardless of the age of the couple. This is due to a lack of awareness about the legal implications of underage marriage, which often leads to couples entering into a union without fully understanding the potential consequences. This lack of preparation often results in the dissolution of marriages in the long term.

Cases of underage marriage/tradition merarik often occur due to a lack of education and parental knowledge about the consequences of underage marriage and several other factors, including poverty, education, children's will, and most importantly due to culture, social, and environmental influences. The lack of knowledge of indigenous people due to rural residence is still low in knowledge and about the dangers of underage marriage.

Child marriage is frequently the result of a lack of education and a lack of awareness within the community. The following data pertains to women aged 20-24 years who were married or living together before the age of 18 in the West Nusa Tenggara province. In 2020, the percentage was 16.61%, and in 2021, it was 16.59%. In 2022, the percentage was 16.23%. However, there are still many cases that have not been recorded, as in reality, many underage marriages are still carried out without registering their marriages at the Office

of Religious Affairs (KUA). This data was obtained from the Census of the Central Statistics Agency.[3]

METHOD

The research methodology employed is normative legal research, which is a combination of empirical legal research. Normative legal research is a legal research method that is carried out on the basis of analyzing the laws and regulations that are relevant to the legal issues that are the focus of research. Empirical legal research is a legal research method that uses facts that exist in a society, legal entity, or government agency as the basis and focus of research. Normative-empirical legal research is a combined method that examines the implementation of normative legal provisions (laws) in relation to specific legal events that occur within a society.[4]

Normative-empirical legal research is a combined method that examines the application of law in relation to underage customary marriage, as outlined in Law Number 16 of 2019. This research is also empirical, as it directly observes and describes customary marriages in Gumantar village.

RESULTS AND DISCUSSION

A. Merarik Custom In Gumantar Village, Kayangan Sub-District, North Lombok District

The history of the merarik tradition in Gumantar Village is a custom or tradition that has existed since ancient times. It has been passed down from generation to generation from the time of the ancestors to the present. In Gumantar Village, there are two ways that the community typically carries out the marriage tradition, including what is usually called Nyegauk and Merarik. The Nyegauk tradition is a community-based custom that can be considered a process or method, akin to a proposal. While merarik is a tradition or custom that is frequently referenced, it is the method most often utilized by the

[3] Census of the Central Statistics Agency. 2022

[4] For further details, please refer to Soerjono Soekanto and Sri Mamudji, Normative Legal Research: A Brief Overview (Jakarta: Raja Grafindo Persada, 2001), pp. 1-2.

community to carry out a marriage. Merarik is typically carried out by both partners, whereby a man carries out his action of stealing or abducting the woman he desires to marry and then takes her secretly and hides her in his family's house. The distinctive custom of merarik in Gumantar Village is that, on the day following the girl's abduction or removal by the man who wishes to marry her, the female family is required to immediately inform the pemekel of her disappearance. The family is obliged to report the loss of their daughter within a day of the incident. Should the female family fail to report the loss of their daughter within the prescribed timeframe, they will be subject to sanctions. These typically involve the payment of a goat, although in the event of financial hardship, the penalty may be replaced with five roosters.

The merarik custom in Gumantar Village is also known as the inward merarik custom and the outward merarik custom. In this context, several provisions must be fulfilled. Typically, if a bride and groom marry and are from the same village, namely Gumantar Village, the agreement used is in the form of kirangan. This term denotes that the man must give at least [...] to the pemekel, which are intended for customary purposes. Two buffaloes are presented to the pemekel, which are intended for customary purposes. This is typically referred to as an inward marriage. Conversely, an outward marriage occurs when a man whose origin is not from Gumantar Village marries a girl whose origin is from Gumantar. The agreement used in this context is called cocol, which implies that the male party must pay money according to the agreement with the female family through the pemekel. However, if a man from Gumantar Village marries a woman from Bayan Village, the kirangan used is a larger amount. In the event that a man with a title such as raden marries a woman with a title of baiq, the kirangan is typically larger than that of ordinary people. Conversely, if a woman with a title of baiq or other marries an ordinary man who does not have a noble title, the man must pay the title of the woman. This is commonly referred to as a downward marriage, which represents a decline in social status.

B. Description of Merarik Custom in Gumantar Village, Kayangan Sub-District, North Lombok District

The description of the merarik custom in Gumantar Village is distinctive and the process is lengthy, according to Amaq Parman, a resident of the Gumantar Traditional Village for an extended period. He notes that the description of the merarik custom in this village is still aligned with its original values from ancient times. This merarik custom has been carried out for generations and preserved for children and grandchildren, ensuring its continued existence.[5]

Merarik is typically conducted by couples who wish to be married in a traditional manner. This involves a man taking away a woman's daughter in secret and hiding her in his family's house with the intention of marrying her. Merarik in Gumantar Village is performed in two distinct ways.

1. Nyegauk

Nyegauk is a process or method of merarik that is rarely employed, yet persists in Gumantar Village. The method of nyegauk is identical to that of taaruf, or proposal. This method can only be carried out within the village and between families on the male and female sides, respectively. Both families must approve of the union and the prospective couple must also be in agreement. Furthermore, there must be no coercion or deception involved. Once these conditions have been met, the method can be initiated.

2. Maling/Memaling Nine

Maling nine is a custom or tradition that is most often practiced by people in Gumantar Village. The meaning of this maling is that a man takes away the woman he likes to his house and then hides her there for several days until news spreads that the couple is married. This custom must be carried out secretly by the two couples who want to marry, with the intention that these married people give a surprise to their respective

[5] An interview with Amaq Parman, the traditional leader of Gumantar Village, was conducted.

families. This memaling tradition is most prevalent and familiar even among the Sasak tribe in general. It is also carried out by this tribe to marry the woman they love. However, the woman who is taken must also like the man because if she does not, it can be considered an act of kidnapping and reported to the authorities. In order for this memaling tradition to be carried out in accordance with the customs of our ancestors from ancient times, it is necessary that the woman be willing and voluntarily turned by the man she loves.

The researcher sought to gain a deeper understanding of the merarik customary process in Gumantar Village by conducting an in-depth interview with Amak Sardep, a resident of the village who was well-versed in its customs. The interview yielded valuable insights, as evidenced by the following response:

Amak Sardep, an indigenous resident of Gumantar Village, Dasan Belek Hamlet, indicated that the merarik custom typically persists for an extended period. The custom encompasses a series of stages, each of which must align with the teachings of the village's ancestors, as elucidated in ancient times. The marriage process in Gumantar Village is as follows:[6]

In the initial stage of the process, the man must bring his woman either by dipaling or by nyegauk. Following this, the family of the woman who is merarik must report that their child has been merarik to the pemekel. The pemekel then conveys the good news to the surrounding community. After a few days, the pemekl must find information about the whereabouts of the married woman and conduct negotiation deliberations or what we call true-selabar with the family of the man who married the woman. The pemekel then conveys the good news to the surrounding community. After a few days, the pemekl must find information about the whereabouts of the married woman and conduct negotiations or what we call true-selabar with the family of the man who married the woman. The deliberations may last for an extended period until both parties reach an agreement. This agreement will determine

[6] An interview with Amaq Sardep, the traditional leader of Gumantar Village, was conducted.

and plan the offerings in the form of kirangan or cocol. Kirangan is more dominant than cocol because it is believed to be more polite and in accordance with the original customs that live in this community.

In Kirangan, the customary form of payment is at least two buffaloes or kao, which are then handed over to the pemekel. This kao does not necessarily have to be given at the beginning; it can be given at any time, even though the woman may already be married and have children. The two buffaloes or kao must be given like a debt and must be paid when they are available. Once the agreement has been reached, the religious contract is typically held a few days or even years later. The woman and man are then taken to the woman's family home to be married, or the traditional contract is re-negotiated. On the night before the traditional marriage contract, the bride is brought to the groom to perform the custom of tegem jontok, where the woman holds her husband's head and makes a loyal oath. The woman promises not to mention the name of another man, other than her husband's name. If she has a child, then her husband's name is called according to the name of her child. If not, then the woman is included as insolent or tular manuh. After making a loyal oath, the woman is tepekelumbung sik putek cloth and made under the slicing. After all the stages and customary processes take place, the woman is then taken to the woman's family home to be married. Subsequently, the traditional ceremony is observed by traditional leaders and indigenous peoples. At the time of the contract, the man has just recited the sentence of Shahada. The stakeholder, or his representative, then strikes the man lightly on the back. If the bridegroom is startled, the community believes that his life is brief. Conversely, if the bridegroom's body responds normally, his life is considered long. After the contract between the bridegroom and bride is signed, the woman is given her own bed, which is called tindok kance begang in the local language. This is followed by the nyongkolan custom, which is a traditional practice unique to the Sasak people of Gumantar Village. In contrast, the Sasak custom in general does not involve the pembayun, which is a debate between the bride and groom's families before the wedding. The Pembayun is a debate or discussion

between the two families of the bride and groom. If both families are equally strong, the debate can last for a considerable length of time until one of the opponents loses. Once all the activities have been completed, the tasyakuran ceremony commences.

Tasyakuran, which translates as "sharing happiness," is a ceremony where the family of the male party celebrates the union of their daughter with the groom. They extend an invitation to the family of the bride, as well as an apology for taking their daughter.

C. Legal Arrangements for Customary Marriage under the Age of Gumantar Village Based on Law No. 16 of 2019

The 1974 Marriage Law, No. 1, established a minimum age for marriage at 19 years old for both men and women. This age was selected because it is believed to be the point at which individuals are physically and mentally mature enough to enter into a lifelong commitment. The purpose of marriage is to provide stability and security for individuals and their families, and studies have shown that the age of 19 is an important milestone in achieving this goal. The increase in the age limit from 16 to 19 years for women to be able to marry has resulted in a lower birth rate, which has the potential to reduce the risk of maternal and child mortality. Furthermore, it has the capacity to fulfill the rights of children in terms of education and other rights.

In the event of a deviation from the minimum age of marriage, parents may request permission or marriage dispensation from the court on the grounds of urgency. This is defined as a situation that is truly unavoidable and where there is no other choice, and it is therefore very forced to carry out the marriage. In order to substantiate the request for dispensation, the parents must provide supporting evidence, such as a certificate or certificate of minority and a certificate from a health worker. This evidence must demonstrate that the marriage is indeed urgent and that it must be carried out without delay.

However, despite the legal relief that has been granted, many individuals remain unaware of the age limit for marriage.

In accordance with customary law, a marriage bond is not merely a union between a husband and wife, but also encompasses the participation of the parents, family, and relatives of both parties in supporting the happiness and permanence of their family household life. In certain areas, customary law does not prohibit underage marriages, whereas in other areas, underage marriages are prohibited due to the perception that they are inappropriate for marriage.

In accordance with customary law, an individual may only enter into and perform a marriage if they are an adult. However, the definition of adulthood according to customary law does not refer to a specific age, but rather considers the circumstances within the individual. For instance, they may live independently, have a job, and not depend on their parents. Furthermore, the validity of a marriage in customary law is contingent upon its solemnization in accordance with the prescribed rites and rituals. These rites must be carried out in the presence of designated relatives and customary leaders, who are expected to recognize the existence of the marriage. In the absence of such recognition, the marriage is considered invalid in customary law.[7]

CONCLUSION

In light of the analysis and discussion presented in the previous chapter, the researcher can draw the following conclusions:

1. The Merarik custom in Gumantar Village, Kayangan Subdistrict, North Lombok Regency:
   a) Maling nine /nyegauk: In the context of the Gumantar Village, the male party is expected to propose to the female party. However, the practice of memaling, or being taken away secretly, is more prevalent.
   b) Subsequent to the girl's removal, her family is obliged to inform the pemekel that their daughter has been taken away or rejected by her partner for marriage. The pemekel then disseminates the news to the

[7] In "Child Marriage Under Age and Its Legal Consequences," published in the Journal of Lex et Societatis II (4), Sherlin Darondos (2024) examines the legal implications of child marriage.

surrounding community and searches for the girl's whereabouts. Upon locating her, the pemekel conducts a true-selabar with the male family to ascertain the date and method of handover to the girl's family, either by kirangan or cocol.

c) The religious ceremony is held, followed by a period of several weeks or even years, during which the traditional ceremony is held. The next day, the nyengkolan is held.

d) The male party engages in a tasyakuran.

2. The legal arrangements pertaining to underage customary marriages in Gumantar Village, as delineated in Law No. 16 of 2019.

In accordance with customary law, a marriage may be conducted and entered into by an individual who is deemed to be an adult, as customary law does not stipulate a minimum age limit for when an individual may enter into a marriage. Consequently, even though a couple who marries before the age of 19 may still do so according to customary law, it is important to note that such marriages are not legally recognized under Indonesian law.

While other regions continue to prohibit underage marriage, Indonesian marriage law sets an age limit for marriage at 19 years of age. However, in the event of urgent circumstances, parents may petition the court for permission to obtain a marriage dispensation for their children.

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