

Local Law Conflict with National Law in Marriage of Lombok

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Abstract: This study describes the conflict of Local Law with National Law in the marriage of the Sasak tribe. Conflict is motivated by the difference of marriage age requirement according to Law of Marriage with the principle that applied in Sasak tribe. Similarly to the criminal provisions that can ensnare them as perpetrators of criminal acts because marriage is done by pulling the girl from the bonds of parents and their families. Based on these conditions, it is necessary to examine the gaps of convergence between the two legal systems in order to harmonize the law in society. This research uses social legal research method, and the result that the practice of pulling has caused latent conflict and manifest in some society, such as the existence of the event that ended in Court. In addition, the pull is also considered as a factor triggering the rampant early marriage that affects the high rate of divorce and maternal mortality, so the government takes an imperative attitude to minimize the impact of pulling with uniform age of marriage, including in customary territories whose condition is not quite in line with the argument.

Keywords - drawing, Sasak community, conflict, local law, national law

Date of Submission: 30-06-2018

Date of acceptance: 16-07-2018

I. INTRODUCTION

Merarik is a marriage done by escaping or freeing the girl from bonds of parents and their families. This tradition is followed by several consequences, of which the twelve (separated) ends not infrequently with physical contact, if in flight it is known or caught by the girl or even a male competitor.¹

Merarik as a common form of marriage in the Sasak tribe has its own unique logic. To the Sasak tribe, to withdraw means to maintain self-esteem as well as describe the attitude of the male Sasak knight for succeeding in taking (escaping) her idol girl, besides as a symbol of one's strong desire to marry.² Bertholomey points out that drawing is an important event in the Sasak marriage, as described by a sentence, that "I do not want to marry a man who dare not risk running away with me, he will be weak, both in my eyes and in others from my village when he asked my father for permission. Actually my dad would throw him out of the house if he tried to do that".³

By contrast, marriage by asking permission to a woman's parent (the marriage) is often regarded as taboo or even as an insult because according to them, the daughter is not like a sirih or a chick that can be taken for granted ('Ara'm ngendeng anak manok baen').⁴

The Sasak tribe is generally permissive of the practice of pulling out, Nur Yasin concludes there are at least five reasons underlying why they agree to the practice of drawing, that is; (a) drawing is a custom and not entirely contrary to the teachings of Islam; (b) inheritance is a traditional heritage; (c) drawing can increase the happiness of married couples; (d) drawing may enhance the husband's social status or wife's social status; (e) drawing is regarded as a common or common matter.⁵

However, in practice, marriage withdrawal has the potential to trigger a conflict with the will of the National Law, such as Article 7 Paragraph (1) of Law no. 1/1974 concerning Marriage which regulates the requirement of marriage age that is 19 year old man and woman 16 year, whereas drawing is generally done when the parties have aqil-baligh or there is special requirement such as existence of weave skill for woman of hamlet of Sade, so that impact to status civility of the parties.

¹ Rahman, F. (2013). *Pernikahan di Nusa Tenggara Barat antara Islam dan Tradisi*. Mataram: LEPPIM IAIN Mataram, p. 114.

² *Ibid*, p. 55.

³ Bertholomey, J.R. (2001). *Alif Lam Mim: Kearifan Masyarakat Sasak*. Yogyakarta: Tiara Wacana, p. 204.

⁴ Kaharudin. (2007). *Perkawinan Adata Merari' (kawin lari) pada Masyarakat Sasak dalam Prespektif Hukum Perkawinan Islam di Nusa Tenggara Barat, Mimbar Hukum, 19 (2)*, p. 308.

⁵ Yasin, N. (2008). *Hukum Perkawinan Sasak*. Malang: UIN Malang Press, p. 169.

Similarly to the rule of law within the scope of criminal law which may ensnare those who engage in marriage by means of withdrawal, as the provisions of Article 332 Paragraph (1) to 1 of the Criminal Code (KUHP) which prohibits a person from taking a woman unmarried without the will of a person old or guardian, although under the agreement of the woman both inside and outside the marriage, will be threatened with a sentence of 7 years in prison.

Departing from the background mentioned above, this research tries to describe conflict of Local Law with National Law in marriage to the Sasak tribe, to then formulate the convergence gap between the two legal systems so that the law is not always in a vacuum due to its inability to respond to social reality around him.

II. RESEARCH METHODS

This research uses a method of socio legal research (non-doctrinal), in which the law is conceptualized as a manifestation of the symbolic meanings of social actors as seen in their interaction,⁶ so this research is aimed to find theories about the process of the occurrence and operation of law in society.⁷

This research was conducted in several areas in Lombok island, especially Bayan Village, Bayan District, North Lombok Regency, and Sade Village of Rambitan Village, Pujut Sub-district, Central Lombok Regency. The determination of the location of the study is based on the consideration that Bayan Village and Sade Village is a customary area that up to now upholds its local laws including in terms of marriage.

The source of data in this research comes from primary sources consisting of primary data, and secondary data. Primary data comes from the main data source in the form of social actions and words,⁸ obtained directly from the Sasak community as well as the relevant parties with the focus of the problem. While the secondary data obtained from library materials such as Law no. 1/1974 on Marriage, Criminal Code, books, journals, research results and articles related to the focus of the problem.

The data in this study were collected through intensive and in-depth interviews of informants as well as unstructured observations aimed at several informants and various situations and literature studies. Furthermore, the data obtained are dialogkan through several theories and concepts relevant to the research variables. Based on these efforts then made interpretations by looking at the correlation between the data with each other to describe the convergence gap between the two legal systems.

III. RESULT AND DISCUSSION

Bayan Village as one of indigenous village in North Lombok Regency, almost all citizens do marriage by way of pulling (in popular parrot with term *memalah*), the rest of marriage done in the form of proposal (*belakok*) by men from outside tribe Sasak. According to Raden Madikusuma Head of Bayan Village,⁹ there are several reasons behind the community doing marriage by means of which are; (a) Communities believe in drawing is part of the tradition that has been going on for generations. (b) The community considers that pulling can increase the *pristes* of the female family, because if marriage is done by proposing as if to equate the girl as a requested good.

In order to preserve the glory of marriage institution, Raden Madikusuma explained that parents in Bayan have a habit of storytelling or storytelling (warrants or *tuaran*) to their daughter since childhood about the severity of responsibilities of a wife or mother in a family, as well as their sons who later became the leader of the family. This habit indirectly affects the growing awareness of the youth to marry when they are proficient both economically and biologically (able to distinguish good and bad).

Raden Madikusuma confirms that in Bayan there is hardly a case of divorce. This condition is influenced by the strong culture of shame, in addition to heroicnya the interesting events they experience when married. In addition, the weight of customary marriage requirements for every married person also contributes to the condition, such as the obligation of men to pay wiring (custody of some cows), *sajikrama* (marriage of the Bayan people is understood as elopment, therefore dowry in this village is called the marriage / *sajikrama*) especially if the married ones come from noble families, including a fine (*dedosan*) imposed if there is a violation of *awiq-awiq* (written law), for example if there is a relative or relative of the girl who saw the occurrence then the male party must submit 244 pieces per hole (*kepeng bolong*) to every house that is passed at the time of pulling up the house hiding.

Based on Bayan data in figures released in 2014 by Central Bureau of Statistics (BPS) Village North Lombok Regency indicates that the divorce rate in Bayan village is 0%, including the absence of maternal mortality cases today as submitted by Raden Madikusuma, although according to health data North Lombok regency in 2015, that in Bayan sub-district, four cases were found, namely three cases in 2011 and 2012 and one

⁶ Wignjosoebroto, S. (2002). *Hukum, Paradigma, Metode dan Dinamika Masalahnya*. Jakarta: HuMa, p. 148.

⁷ Sunggono, B. (2002). *Metodologi Penelitian Hukum*. Jakarta: Raja Grafindo Persada, p. 43.

⁸ Moleong, L.J. (2007). *Metode Penelitian Kualitatif*. Bandung: Remaja Rosdakarya Offset, p. 112.

⁹ Interview on January 21, 2017 at, Bayan.

case in 2015. This information is important considering many people who see the correlation of the rise of early marriage with increasing maternal mortality rate.¹⁰

If shifted to see the reality of drawing to the south side of Lombok Island (side dish of the mountain) is Sade central Lombok district, will be found conditions similar to Bayan Village, where according to Kurdap Head of Dusun Sade,¹¹ almost all citizens also married by way of pulling. Similarly, cases of divorce and maternal deaths are rare in this village.

As one of the representations of the Sasak tribe in the area of the mountain side which still upholds the tradition and culture of Sasak, it is considered a symbol of honor and prestige for the parties who carry it out. They also assume that his daughter is something valuable, so according to Kurdap if marriage is requested in the usual (peminangan) then it is considered like asking for goods that are not valuable.

The age range of marriage in this village is ranged from 13 to 18 years. For Sasak people in the Sade Hamlet, getting married at the age of the child or adult does not guarantee a man's maturity to marry. Indications of maturity among others can be seen from the ability of men to earn money or work, and the ability to perform reproductive tasks for women. Kurdap further explained, that the feasibility of a girl to marriage is also determined by their skill in weaving. If the girl does not have the cleverness of weaving then he is considered not worthy or competent to get married. This requirement is mainly related to the aspect of independence of the girl in order to help the family economy later, in addition as a way to preserve the tradition of weaving in the hamlet Sade.

Nowadays the existence of pulling is often associated with the rise of underage marriages which leads to high divorce rates in the Sasak community. This argument is motivated by the number of marriage withdraws conducted under age as stipulated in Article 7 Paragraph (1) of Law no. 1/1974 concerning Marriage: 19-year-old man and 16-year-old woman, where physically and mentally a person under the age is considered not ready to marry

Based on NTB data in 2016 figures compiled by BPS NTB, the highest divorce rate occurred in East Lombok of 3.78%, followed by Central Lombok 3.44%, North Lombok 3.40%, West Lombok Regency 2.81%, and Mataram 2.36% in which the marriage of the community is generally done by way of drawing.

Departing from these conditions, the Provincial Government of NTB issued the Governor's Circular Letter Number SE / 150/1138 / KUM of 2014 on the Maturity of Marriage Age (PUP) which recommended the age of marriage for men and women at least 21 years. This Circular Letter is issued to encourage all units of work, regional apparatus and the Regent / Mayor of West Nusa Tenggara to implement the PUP program in accordance with their respective duties and responsibilities.

In addition, some parties also discourse the existence of sanctions for married couples underage, among them the proposal of Masbagik Sub-District of East Lombok regency which disclosed the imposition of a fine of 25 million rupiah against married couples early.¹² Similarly the Village Government of West Lombok Kekait which impose a fine of 1.5 million rupiah for couples who mengarik kodeq (young marriage), as stated Hamdi Secretary Bale Sangkep Village Kekait.¹³

By 2014 several institutions have filed a judicial review of the provisions of Article 7 Paragraph (1) of Law no. 1/1974 concerning Marriage, such as the lawsuit number 30 / PUU-XII / 2014 filed by the Women's Health Foundation, including the Foundation for the Monitoring of the Rights of the Child, based on lawsuit number 74 / PUU-XII / 2014 to the Constitutional Court. However, in the course of June 2015 the lawsuit was rejected by the Panel of Judges with consideration, there is no guarantee that if the minimum marriage age is raised, divorce rates, health and social problems will be reduced as the background of the lawsuit emerges.¹⁴

The practice of drawing in Bayan Village and Sade hamlet shows that the actual existence of the drag is not always directly proportional to the high rate of divorce and maternal mortality, if in practice it is done correctly according to its rules. Therefore, the transformation of knowledge as the concept of false or warrants in Bayan society, it is important to do in order to maintain the glory of the institution of marriage while preventing the degradation of values on this tradition in the community.

In addition to issues related to concerns about the vulnerability of divorce cases and maternal mortality, it should also be considered about the status of civilization born from marriage that does not meet the requirements of marriage age, such as unclear legal status of children, and the unwarranted rights of wives and children's rights to the livelihood and inheritance. Under such circumstances, Article 7 Paragraph (2) of the Marriage Law provides exceptions to the provisions of Article 7 Paragraph (1) in the form of applications for

¹⁰ KOMPAS.Com. (2009). *Pernikahan Dini Bentuk Pelanggaran HAM*. Available online from: <https://internasional.kompas.com/read/2009/01/28/19315957/Pernikahan.Dini.Bentuk.Pelanggaran.HAM>. (accessed March 4, 2018).

¹¹ Interview on February 8, 2017, at Sade.

¹² LombokPost.net. (2016). *Merarik Kodeq Didenda Rp. 25 Juta*. Available online from: <http://www.lombokpost.net/2016/09/19/merarik-kodeq-didenda-rp-25-juta/>. (accessed March 4, 2018).

¹³ Interview on February 15, 2017, at Kekait.

¹⁴ BBCNEWSINDONESIA. (2015). *MK Tolak Naikkan Batas Usia Minimal untuk Menikah*. Available online from: http://www.bbc.com/indonesia/berita_indonesia/2015/06/150618_indonesia_mk_nikah. (accessed March 4, 2018).

the dispensation of marriage through the Court or other appointed officials of the parties, but this means is not fully accessible mainly by indigenous peoples given its procedural-formal nature, in which not all requests can be granted. Not surprisingly, in some Courts, petition for marriage dispensation is small compared to the marriage in the community. For example, the Religious Courts of Praya, in 2014 only accept and decide 2 cases of marriage dispensation, or Religious Court of Mataram, which is 11 cases of marriage dispensation during the period of two years ie in 2015 and 2016.

Considering that marriage is a common form of marriage in Sasak society, it is necessary to formulate adaptive regulations at the regional level in addition to legislative review efforts through the improvement or amendment of marriage law, so that the social impact as well as legal consequences on the status of civilization of the parties can be minimized. For example, by inventorying the potential values of local wisdom that can be crystallized into a general principle, such as the condition of weaving skills for women who will be drawn in the hamlet Sade, can be viewed as the principle of independence, where the form of marriage in general also requires such a principle as an indicator of maturity of the parties to be married. In this context, Nonet and Selznick through responsive legal theory assume that social pressures should be sources of knowledge and opportunities for self-correction.¹⁵ Therefore, the law should appear as a means of response to new forces within its environment for the achievement of justice and public emancipation.

In practice, marriage drawing does not always go smoothly. In addition to the age of women who are still under age, the difference of class or social class (nobility) to the disagreement of women's parents against the men often lead to conflict. Therefore, the outcome of conflict can also be latent and manifest. The latent conflict is in the form of a parent's resignation to marry off a child who has been taken away because in view of the sasak community if the child is taken back will be a disgrace to the family and the environment, as a father's disappointment in West Lombok who told me that he was forced to marry his daughter, so that her daughter quit college after being rushed,¹⁶ or vice versa the effort of parents to prevent the parties who questioned his son's decision to marry early after being rushed to lure a sum of money as happened in Barabali village of Central Lombok.¹⁷

Latent conflicts can also develop into manifest conflicts because of the existence of criminal law provisions that have the potential to place them as perpetrators of criminal acts, such as Article 332 paragraph (1) to 1 of the Criminal Code which provides that "whoever carries out a woman who is immature without being desired his parents or guardians, both inside and outside the marriage will be threatened with a maximum sentence of 7 years in prison".

There are examples of cases relating to the practice of marriage that ended in court, including the case of a drag that occurred in Dusun Lingkok Lime Village Setiling Central Lombok regency. This case originated from the disapproval of a woman's parents because her daughter was carried away by her lover. This event was done at the request of the girl until they finally agreed to draw. The case has been decided by the Praya District Court in 2013 by imposing a one month and fifteen-day imprisonment on the prospective groom, although ultimately the parties continue to marry.¹⁸

It is not easy to conclude whether an act of escaping the girl is part of the ritual of pulling, because for those who may consider ("abusing") to withdraw as an instant way to marry, especially if the relationship never gets the blessing of a parent may be in the name of a tameng to smooth out what he wants. Therefore, it is necessary to optimize the role of customary institutions to identify whether an act is part of the practice of drawing, therefore the authority of the settlement of disputes is in the domain of customary institutions, or including criminal acts under Article 332 Paragraph (1) to 1 of the Criminal Code.

In addition, efforts are needed to rectify the practice of pulling (according to the rules) in the community. This effort can be done by optimizing the function of educational institutions through the improvement of local content curriculum based on the values of local wisdom, given the shift of values is also one of the trigger factors that contribute to the conflict.¹⁹

Elsewhere, in August 2010 there was a conflict in the form of physical contact with the victim of a dead, three seriously injured and three houses on fire. This event is triggered by a misunderstanding in addressing the practice of withdrawal. The conflict began when women from Kelantih Hamlet, Bonder Village,

¹⁵ Nonet, P. & Selznick, P. (2015). *Hukum Responsif*. Bandung: Penerbit Nusa Media, p. 87.

¹⁶ Aniq, A.F. (2012), Konflik Peran Gender pada Tradisi Merarik di Pulau Lombok, Conference Proceedings AICIS XII Surabaya, November 5-8, 2012, p. 2329.

¹⁷ Putri, R.D. (2017), *Upaya Menekan Angka Perkawinan Anak: Belajar Dari NTB*, Available online from: <https://tirto.id/upaya-menekan-angka-perkawinan-anak-belajar-dari-ntb-cBJQ>, (accessed January 4, 2018).

¹⁸ Putro, W.D. (2013). Perselisihan Sociological Jurisprudence dengan Mazhab Sejarah dalam Kasus Merarik, *Jurnal Yudisial*, 6 (1), p.49.

¹⁹ Badan Pengembangan Sumber Daya Departemen Kebudayaan dan Pariwisata RI, (2004). *Kajian Konflik Perspektif Budaya*. Jakarta: Kementerian Kebudayaan dan Pariwisata Deputi Bidang Peningkatan Kapasitas dan KLSN ASDEP Urusan Penelitian dan Pengembangan, p. 17.

Praya Barat were taken away by men from the same village. The girl's family does not agree with the marriage plan because men are not from among the nobility.²⁰

Attract has its own uniqueness when compared with the forms of marriage in general. Originally draws on the backdrop of the effort to maintain social status in the life of the community because of the former strata social placing a person / group of people in different positions, lower and higher. Implementation of this is manifested in the form of a so-called noble class, the second group is the prong and the third is the feather of the honest. Against the second and third classes there is no certain restriction on marriage. While these two groups with the first class whose social status is considered higher, the customs impose the rule that women of the first group are not allowed to marry men of the second and third classes in order to maintain the lineage in order to remain in their social status.²¹

Against the custom, the protests arise from the second and third groups. Both of these groups still hold the principle of independence that the determination of the soul mate is the authority of every person who wants to carry out marriage, other than because they do not want to be treated by the first group that gives men from the group married women who are not from the group and not vice versa.²²

It is not surprising that marriage with the run (pull) is ultimately chosen as a way to maintain the second and third group self-esteem, which then gave birth to idioms among them rife with buying and selling of manuk (like buying and selling chickens), meaning marriage is done by the way begging the male side to the women is the same as degrading the women's social status.²³

In essence, marriage is organized in order to provide protection to women in the form of the right to choose and maintain the preferred men, to then be a husband or spouse. In addition, marriage by means of withdrawal is considered as an ideal (objective) way to minimize the irrelevance of the men who rejected the girl if done by way of marriage (belakoq), especially if the proposing party came from some family or close relatives of parents the girl.

Islam considers that women are human beings who have the independence to choose and determine the man who will become his life partner, which is termed as the process of khitbah. Khitbah is the gateway to marriage. It is merely a preamble to marriage, where this ritual is a process of seeking the consent of a woman to become a wife to a man, or a man's plea against a woman to be a would-be. Therefore the practice of drawing is not entirely contrary to the principle of marriage in Islam especially when viewed from the position of women as an independent person.

The existence of cultural awareness of the extraordinary role attached to each Sasak woman, should be seen as a way of adoring their figures, so it is not surprising that in the Sasak tribe appeared some famous phrases as often pronounced by the Bayan people Gumi Bayan Gumi Nina every time calling their place or land tied up now as a place that inflicted a female figure. The phrase Gumi Nina literally means the female earth is a parable, a symbolic imagery that every inch of land in Gumi Nina always cultivate the seeds of life for the welfare of the people of Bayan.²⁴

If it is oriented to the garden mirror theory that wants that every legal system always implies a close relationship with the ideals of the existence of that society, then national law should emerge as a representation of society's need for law.²⁵ Therefore, legal transplanted methods in the context of development or reform of national law should consider local legal norms, especially when the law serve as a means for social change in society, so it becomes a necessity if the provisions of Article 322 Paragraph (1) to 1 of the Criminal Code are still used as the basis of law enforcers to criminalize married offenders, in order to avoid a vacuum recht or on behalf of the public interest, where the rule of law comes from different societal backgrounds with the more heterogeneous plural of Indonesia.

Ade Saptomo considers that in social life, the principle of kinship is a traditional institution formerly used to resolve disputes and the principle of consensus deliberation, is undeniably a part of the richness of Indonesian culture, but is not developed naturally to resolve disputes, given the current modernization brings changes in the social life of the tendency of the emergence of a suing lawsuit that has an impact on the accumulation of cases in court.²⁶ Therefore, the strengthening of customary institutions (community mediation) should receive the attention of both government and society so that issues arising from disharmony of local law and national law in marriage practice in the Sasak tribe can be solved for the achievement of substantive justice.

²⁰ Aniq, A.F, *Op.Cit.*, p. 2330.

²¹ Rahman, F. *Op.Cit.*, p. 135.

²² *Ibid.*

²³ *Ibid.*, p. 136.

²⁴ Sawinggih, R. et.al, (2016). *Dari Bayan Untuk Indonesia Inklusif*. Mataram: SOMASINTB, p. 168.

²⁵ Suadarman, A. (2006). *Hukum dan Moralitas, Jurnal Hukum Pro Justitia*, 24 (3), p. 303.

²⁶ Saptomo, A. (2001). *Hukum dan Kearifan Lokal: Revitalisasi Hukum Adat Nusantara*. Jakarta: PT Gramedia Widiasarana Indonesia, p. 97.

IV. CONCLUSION

Local Law Conflict with National Law in the marriage of the Sasak Lombok tribe is motivated by two factors; (a) differences in legal procurement requirements under the provisions of Article 7 Paragraph (1) of Law no. 1/1974 concerning Marriage with the term of legal proficiency applicable in Sasak tribe; (b) the existence of a criminal opportunity against those who have engaged in marriage under Article 332 Paragraph (1) to 1 of the Criminal Code. Convergence of conflicts on legal skill requirements is done by drawing the values of local wisdom into a general principle to then be concretized in the form of regulation at the local level, as the condition of weaving skills for Sade women to be married is crystallized into the principle of independence in order to be in harmony with the will of marriage legislation. While the protection of the opportunity for criminal punishment for those who engage in marriage is done by optimizing the role of customary institutions or community mediation in the community.

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IOSR Journal of Humanities and Social Science (IOSR-JHSS) is UGC approved Journal with Sl. No. 5070, Journal no. 49323.

Hilman Syahrial Haq "Local Law Conflict with National Law in Marriage of Lombok." IOSR Journal Of Humanities And Social Science (IOSR-JHSS). vol. 23 no. 07, 2018, pp. 30-35.