

The Legal Status of Marriage (Merariq) Implementation Within the Indigenous People of Sasak Lombok

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Abstract

This research examines the legal status of merariq marriages within the Sasak traditional community in Lombok. Merarik marriages, governed by customary practices and norms, often conflict with Indonesia's national positive law. This study explores the interaction between Sasak customary law and national law regarding merarik marriages. Using qualitative methods and a case study approach, the researcher conducted in-depth interviews with traditional leaders, legal practitioners, and community members to gain a comprehensive understanding of the issue. The findings reveal a discrepancy between national legal provisions and customary practices, creating challenges in legal recognition and enforcement. The study suggests that harmonization between customary and positive law is necessary to ensure fair recognition of customary practices and the protection of individual rights. This research aims to enhance understanding of the legal dynamics within Indigenous communities and support the development of policies that are inclusive and responsive to cultural diversity.

Keywords: *Legal status of Marriage, Merariq, Sasak Customary Law.*

1. INTRODUCTION

In Indonesia, marriage involves the organization of the marriage ceremony, which is generally governed by Customary Law. Additionally, marriage is regulated by Religious Law and State Law (i.e., the applicable laws and regulations). Therefore, for a marriage to be considered valid in Indonesia, particularly among the Sasak people on the island of Lombok, it must comply with all three legal frameworks,

“A marriage event for the Sasak people on the island of Lombok is considered fully valid if it has followed three legal channels: Customary Law, Religious Law, and State Law.”¹

According to Wirjono Prodjodikoro, as quoted by Surojo Wignjodipuro, “Marriage is cohabitation between a man and a woman that meets the requirements outlined in marriage regulations.”² Law No. 1 of 1974, Article 1, defines marriage as follows:

1 Lalu Wirajuna, “Pengaruh Berlakunya Undang-Undang No. 1 Tahun 1974 Terhadap Tata Cara Perkawinan Masyarakat Suku Sasak Di Pulau Lombok” (Universitas Airlangga, Surabaya, 1984)., pg. 25.

2 dalam Surojo Wignjodipuro Wirjono Prodjodikoro, *Hukum Perkawinan Di Indonesia* (Sumur Bandung, Bandung, 1984)., pg. 71.

Marriage is a physical and mental bond between a man and a woman as husband and wife, to form a family (household) that is eternal and happy based on God Almighty.

In the explanation, it is emphasized that:

“As a country based on the Almighty God, marriage has a very close relationship with religion or spirituality. Therefore, marriage not only has a physical element but also an important inner or spiritual element. The purpose of marriage is to form a happy family, which is closely related to offspring, maintenance, and education, as well as the rights and obligations of parents.”

The occurrence of this birth bond is the basis for forming and fostering a happy and eternal family based on God Almighty. Based on this fact, marriage is defined as “a life together between a man and a woman who fulfill the conditions included in these regulations”.³ However, from the other side (biologically) there is an opinion saying that the purpose of marriage is to obtain offspring and fulfill sexual needs, so marriage is a contract or agreement to bind a man and a woman to legalize sex between the two parties or realize a happy family life filled with affection and tranquility in a way that is approved by Allah SWT.⁴

Ensuring the realization and safeguarding of these fundamental human rights is a global imperative. This is seen in the creation of the Universal Declaration of Human Rights (UDHR). Article 26 of the Universal Declaration of Human Rights states that every individual is entitled to a suitable education, which should focus on the growth of one's character. Furthermore, parents have the freedom to decide the type of education their children get⁵.

Another perspective defines marriage as “a legal framework that formalizes the union between a man and a woman who are not mahram, and delineates their rights, obligations, and mutual support.”⁶ Meanwhile, Soetojo defines marriage as “a life partnership between a man and a woman that is formally recognized by law, encompassing both juridical and religious aspects, in line with the purpose of the marriage institution.”⁷

With the enactment of Law No. 1 of 1974, every marriage in Indonesia must comply with the provisions of the Marriage Law and its implementing regulations. This legislation has unified the laws governing marriage, establishing a single legal framework for all Indonesian citizens.

The intent is evident in the preamble of the Marriage Law, which states, among other things, that “in accordance with the philosophy of Pancasila and the ideals of fostering national law, it is necessary to have a Law on Marriage that applies to every citizen.” This means that juridically, there is no marriage law other than the provisions contained in Law No. 1 of 1974. However, in reality, communities still uphold and follow the provisions of other laws, such as Religious Law and Customary Law, especially in the context of customary marriages.

Law No. 1 of 1974, Article 2, provides as follows:

1. A marriage is valid if performed according to the laws of each religion and belief.

3 Wirjono Prodjodikoro, “Perbuatan Melawan Hukum,” *Jakarta: Sumur Bandung*, 1984., pg. 7.

4 Soemiyati, *Hukum Kekeluargaan Indonesia* (, Yayasan Penerbit Universitas Indonesia (UI), Jakarta, 1986)., pg. 86.

5 Winsherry Tan, “Pemenuhan Hak Pendidikan Anak Suku Laut Di Pulau Kelumu Kabupaten Lingga,” *Jurnal IUS Kajian Hukum Dan Keadilan* 9, no. 3 (2021).

6 H. Sulaeman Rasyid, *Pengantar Fiqh, Bintang Kejora* (Surabaya, 1998)., pg. 25

7 R Soetojo Prawirohamidjojo, “Pluralisme Dalam Perundang-Undangan Perkawinan Di Indonesia” (Universitas Airlangga, 1986)., pg. 22.

2. Every marriage must be registered following the provisions of the applicable legislation.

Based on these provisions, a marriage is considered valid if it is conducted according to the respective religions and beliefs of the individuals involved. For administrative purposes, every marriage must be registered. Therefore, a marriage is legally valid if it is performed according to the laws of each religion and belief.

Given this reality, one opinion states that “Indonesian society is characterized by a plurality of laws, including customary law, local law (reflecting social and cultural diversity), and customary law that exists and functions within empirical reality according to the developments in each community.”⁸

In reality, however, marriages in Indonesia are often not registered, a practice commonly known as ‘nikah siri.’ As a result of nikah siri, the couple does not receive a marriage certificate, and children born from such marriages do not have birth certificates. This situation is particularly detrimental to the children, as they are legally not entitled to inheritance, especially from the male parent.

The people of West Nusa Tenggara, particularly those in Central Lombok Regency, comprise various tribes, including the Sasak, Javanese, Mbojo (Bima), Sumbawa, Balinese, Arab, and Chinese tribes. Among these tribes, the Sasak tribe has a unique traditional marriage procedure characterized by meaningful similarities and differences. This reality warrants systematic and in-depth research, particularly regarding the implementation procedures and the marriage system of the Sasak tribe.

In almost all Indigenous communities, marriage is not only a private matter for the prospective bride and groom but also a matter for the family (relatives) and the Indigenous community. This aligns with the opinion that “according to customary law, marriage involves relatives, family affairs, community affairs, matters of social status, and personal affairs in various relationships.”⁹

Because marriage is a family affair, and kinship systems among indigenous peoples differ, the forms of marriage also vary. Indigenous societies in Indonesia generally recognize three ways of marrying: marriage by proposal, marriage by abduction, and marriage by elopement.

In the Sasak tribe, the merariq marriage method, which can be equated with marriage by abduction, is a common and highly favored practice. In this method, a man takes away a woman who loves him, with her consent and agreement, to make her his wife. The Sasak people are generally still loyal to the institution of marriage by merariq. This tradition significantly influences the marriage law of the Sasak people in Lombok, as merariq is seen as an expression of desire that cannot be prevented or redirected. In line with Roscoe Pound’s opinion, “law must be seen or viewed as a social institution that functions to meet social needs, and the task of legal science is to develop a framework in which social needs can be maximally met.”¹⁰

The legality of a marriage is established if it is conducted based on religious law, such as Islam. This is in accordance with Article 2, paragraph (1) of Law No. 1 of 1974, which states that a marriage is valid if it adheres to the laws of each religion and belief. Meanwhile, paragraph (2) stipulates that “every marriage must be registered according to the applicable laws and regulations.” Therefore, Muslims perform marriages according to their religious law, just as adherents of other religions do. Regarding

8 Yanis Maladi, “Pendaftaran Tanah Nasional Dan Kehidupan Hukum Masyarakat (Perspektif Teori-Teori Sosial),” *Mahkota Kata, Yogyakarta*, 2008., pg. 80.

9 Barend ter Haar, *Asas-Asas Dan Susunan Hukum Adat* (Pradnya Paramita, 1983)., pg. 7.

10 dalam Surjono Soekanto Rescoe Pound, “Pokok-Pokok Sosiologi Hukum” (, PT. Raja Grafindo Persada, Cet. XV, Jakarta, 2005)., pg. 42.

marriage registration, specifically for Muslims, it is regulated by Law No. 22 of 1946 in conjunction with Law No. 32 of 1954. According to the Compilation of Islamic Law, the definition of marriage can be explained as follows:

“a very strong contract or miitsaaqan ghaliizhan to obey the commandments of Allah, and carrying it out is an act of worship. Marriage aims to create a household life that is filled with tranquility (sakinah), love (mawaddah), and mercy (rahmah).”

For this reason, the authors are interested in conducting scientific research titled: “The Legal Position of the Implementation of Sasak Merarik Customary Marriage.” Based on the description stated above, several problems can be formulated for the study: What is the legal position of Sasak customary marriage? How is marriage regulated according to Sasak customary law?.

Some intriguing traditions relate to the customs of Merariq (Kawin Lari) Sasak society in the context of Islamic marriage law in West Nusa Tenggara. The Sasak tribe’s marriage traditions in Lombok are a case study of the integration of religion and culture in traditional communities. Therefore, the author needs to formulate such a matter as material for explanation and comparison to the customs in force today.

This study aims to Determine and analyze the legal position of Sasak customary marriage. Determine and analyze the marriage arrangements according to Sasak customary law. The benefits of this research are expected to be academically providing valuable input for higher education institutions, particularly the Faculty of Law Postgraduate Program, to support legal research and contribute to the development of legal science. Practically, it serves as a useful resource for the Regional Government of West Nusa Tenggara, and relevant agencies, offering insights for the formulation of laws and regulations related to marriage according to Sasak customary law.

The research method is a crucial component of research activities and the preparation of scientific papers, as it determines how the research is conducted and the results obtained. This research is categorized as normative-empirical law, which involves examining statutory provisions theoretically (in *abstracto*) and observing legal facts that occur in practice (in *concreto*). To explore this topic, the following approaches are used: **first**, Statute Approach; Focuses on the study of positive law. **Second**, Conceptual Approach; Discusses related legal definitions and concepts. And Socio-Legal Approach; Examines the relationship between law and society.

Data collection techniques include: **Interviews**: Conducted by asking questions directly to informants and respondents to gather information about the legal position of Sasak merariq marriages. **Observation**: Involves directly monitoring the implementation of merariq marriage within Sasak society. And **Documentation**: This entails collecting and reviewing documents and written or pictorial evidence related to the research topic.

The collected data is analyzed using a descriptive qualitative analysis method, which involves a thorough examination of the data to provide a comprehensive explanation of the subject matter under study. The findings of this analysis are systematically and sequentially formulated to address the research objectives.

There are several legal theories for discussing and studying the problems of this research, but the researchers rely more on customary law theory:

1. The theory of the rule of law

The terms ‘State of law’ (*rechtsstaat*), ‘rule of law,’ and ‘Indonesian State based on law’ (*rechtsstaat*), as mentioned in the 1945 Constitution prior to the amendment, are frequently used in Indonesian literature. According to Sjachran Basah:¹¹

“The Pancasila State of Law, as a rule of law, is not merely a set of regulations applied to Indonesian society. It signifies the placement of the legal system within certain ultimate, dynamic ideals that continuously strive for ideal goals based on the ideology of Pancasila.”

According to A. Muktie Fadjar, the term ‘rule of law’ (*rechtsstaat*), as opposed to the ‘power state’ (*machtsstaat*), is formulated as follows:¹²

“The concept of the ‘state of law’ (Dutch: rechtsstaat) refers to a state that aims to organize a legal order based on the principles and values found within its populace. The rule of law ensures that this legal order is maintained, preventing disturbances and ensuring that all actions and procedures adhere strictly to established legal frameworks.”

The concept of a ‘power state’ (Dutch: *machtsstaat*) refers to a state that aims solely to preserve and maintain power. Consequently, constitutional scholars have attempted to define the concept of the rule of law. D. Mutiar, in his book *Ilmu Tata Negara Umum*, provides the following definition of the rule of law:¹³

“A State of Law is one whose structure is best regulated by legal principles, ensuring that all powers of government organs are grounded in law. Individuals are prohibited from acting independently in ways that contravene legal statutes. In a State of Law, governance is not based on the whims of individuals but on established laws. Consequently, the rights of the people are fully guaranteed by the state, while the people, in turn, are obligated to comply with all governmental regulations and state laws.”

The understanding of the Indonesian State of Law is based on fundamental principles that distinguish it from other states. A key feature of a State of Law is its provision of protection to its citizens in various ways. Therefore, the elements of a State of Law are deeply rooted in the history and development of each nation. Since each nation or state has a unique history, this leads to different interpretations of the terms and content of the State of Law across various countries. Salman Soemantri states that:

“The terminology of the rule of law is not explicitly mentioned in the original 1945 Constitution, neither in its Preamble nor in its Articles. However, the General Elucidation, specifically in the explanation of the State Government System, states that ‘Indonesia is a State based on law (rechtsstaat).’ This term is explicitly and clearly used in the 1945 Constitution after the amendment, specifically in Article 1, paragraph (3).”¹⁴

According to Wahyono;

“Indonesia is a State based on law, with the formulation (rechtsstaat) in parentheses, implying that the model adopted does not deviate from the general notion of a State of Law

11 Sjachran Basah, *Eksistensi Dan Tolok Ukur Badan Peradilan Administrasi Di Indonesia* (Alumni, 1985). pg. 4.

12 A. Muktie Fadjar, *Tipe Negara Hukum* (Bayumedia Publishing, Malang, 2003).. pg 5.

13 D’ Mutiar’as, *Ilmu Tata Negara Umum* (Pustaka Islam, Jakarta, 1955). pg 20.

14 Otje Salman, “Rekonseptualisasi Hukum Adat Kontemporer,” *Alumni, Bandung*, 2002. pg 1 139.

(*genusbegrip*), but is adapted to Indonesia's specific circumstances. This means that it is applied by the nation's worldview and perspective on governance."¹⁵

The discussion reveals that "rechtsstaat" can be interpreted as synonymous with a state based on law, whereas it is frequently translated as a state of law. According to Jimly Asshiddiqie,¹⁶ "The Indonesian state is described as a State of Law (*rechtsstaat*) rather than a State of Power (*machtsstaat*) because it embodies the principles of legal supremacy and constitutionalism. This includes adherence to the supremacy of law and the constitution, as well as the principle of separation of powers as outlined in the 1945 Constitution."

In a state of law, the government must ensure law enforcement and achieve legal objectives, in the law enforcement process three elements must get serious attention, the three elements according to A. Hamid S. Attamimi is as follows¹⁷:

1. Justice
2. Benefits or the use of results (*doelmatigheid*)
3. Legal certainty

The primary purpose of law is to maintain order within society. Adherence to this order is essential for ensuring a well-regulated community. To achieve such order, social interactions must be governed by principles of legal certainty. Laws must be both implemented and enforced to provide *justiciable* protection against arbitrary actions. This ensures that all individuals are safeguarded by predictable and fair legal processes.

2. The Theory of Legal Certainty

Before delving into the concept of legal certainty, it is essential to first understand the meaning of law. Various scholars have offered interpretations of the law. According to Yulies Tiena, "Law can be described as a set of living instructions designed to regulate order within a society. These instructions are to be adhered to by the community members, as violations may prompt intervention by the governing authorities of that society."¹⁸

Regarding the purpose of the law, several theories have been proposed:¹⁹

- a. **Ethical Theory** posits that the primary objective of law is to achieve justice. Aristotle, a proponent of this theory, distinguished between two types of justice: distributive and commutative. Distributive justice involves allocating resources or benefits based on an individual's contributions or merits, while commutative justice entails providing equal shares to individuals without considering their specific contributions.
- b. **Utility Theory**, as articulated by Jeremy Bentham, asserts that the purpose of law is to promote what is useful or effective. Bentham's principle, often summarized by the adage "The greatest happiness for the greatest number," emphasizes that laws should aim to maximize overall happiness and well-being. This perspective, known as eudaemonism or utilitarianism, advocates for laws that enhance societal welfare.
- c. **Pengayoman Theory** suggests that the purpose of law is to safeguard individuals, both actively and passively. Actively, it aims to foster humane social conditions

15 Padmo Wahyono, *Indonesia, Negara Berdasarkan Atas Hukum* (Ghalia Indonesia, 1983). pg 7.

16 Jimly Asshiddiqie, "Struktur Ketatanegaraan Indonesia Setelah Perubahan Keempat UUD Tahun 1945," in *Makalah Seminar Pembangunan Hukum Nasional VIII, Tema Penegakan Hukum Dalam Era Pembangunan Berkelanjutan, Diselenggarakan Oleh Badan Pembinaan Hukum Nasional, Departemen Kehakiman Dan Hak Asasi Manusia, Denpasar, 2003.* pg 5

17 A. Hamid S. Attamimi, *Peranan Keputusan Presiden Republik Indonesia Dalam Penyelenggaraan Pemerintahan Negara* (Universitas Indonesia, Jakarta, 2000)., pg 74.

18 Yulies Tiena Masriani, *Pengantar Hukum Indonesia* (Sinar Grafika, Jakarta, 2008)., hal. 6-7.

19 Masriani.. pg. 9-12

through a natural process. Passively, it seeks to prevent arbitrary actions and the abuse of rights. Efforts to realize this protection include:

- 1) Achieving order and regularity;
- 2) Realizing true peace;
- 3) Realizing justice
- 4) Promoting social welfare and justice.

Regarding the binding force of law within society, Gustav Radbruch's *Gedingsstheorie* provides insight into the necessary values for the effective enactment of law. Radbruch posited that a law must fulfill three fundamental values:²⁰

- a. **Juridical Doctrine:** The value of legal certainty, where the law's binding force is derived from adherence to higher legal principles and rules.
- b. **Sociological Doctrine:** The sociological value, which means that the law is binding either because it is recognized and accepted by society (recognition theory) or because it can be enforced even if the community opposes it (coercion theory).
- c. **Philosophical Doctrine:** The philosophical value, signifying that legal rules are binding if they align with the ideals of law, with justice being considered the highest positive value.

For the law to be effectively applied, it must satisfy these three fundamental values. Legal certainty, in particular, is closely linked to the inclusion of a safety clause in a State Administrative Decree. The presence of legal certainty in such decrees ensures that both the public and government officials are afforded legal protection. This is because legal certainty serves as a crucial mechanism for guaranteeing protection and upholding the rights of those entitled to it.

3. The Theory of Legal Effectiveness

According to the 1945 Constitution, the Republic of Indonesia is defined as a state of law (*rechtsstaat*). This designation mandates that all actions by the state, government, and citizens must adhere to legal principles. Any breach of the law must be met with legal accountability, including appropriate actions and penalties as stipulated by the relevant laws and regulations. The effective implementation of laws is crucial, as laws, which consist of a series of written provisions, become meaningless if not enforced. This perspective aligns with Paul Scholten's view that the law, in essence, becomes effective only through its application; otherwise, it remains merely a set of written words.²¹

Law enforcement, often referred to as the implementation of the law, is essential for realizing the rule of law in society. As Satjipto Rahardjo²² articulates, "Law enforcement is a process of translating legal aspirations into reality. These legal aspirations are essentially the intentions of the legislature as articulated in legal regulations."

According to Sudikno Mertokusumo²³, law enforcement aims to achieve the fundamental purpose of the law, which is "*to create an orderly society by establishing order and balance. The attainment of societal order is expected to protect human interests effectively.*"

20 Satjipto Rahardjo, *Ilmu Hukum* (PT.Citra Aditya Bakti, Bandung, 2000)., hal. 19

21 Rahardjo., pg. 69.

22 Rahardjo., pg. 34

23 Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar* (Cetakan Kedua, Liberty, Yogyakarta, 1986). pg. 57.

According to Soerjono Soekanto, the effective enactment of a rule of law requires the fulfillment of three key elements:²⁴

- a. Juridical Application:** The law is considered to apply juridically if it is established according to higher-level norms (as proposed by Hans Kelsen), formulated through a predetermined process (as described by W. Zevembergen), or if it demonstrates a mandatory link between conditions and their consequences (as noted by J.H.A. Logemann).
- b. Sociological Application:** The law applies sociologically if it is effective in practice. This implies that the rule can be enforced by authorities even if it is not accepted by citizens (power theory) or recognized by the community (recognition theory).
- c. Philosophical Application:** The law applies philosophically if it aligns with the highest ideals of law, reflecting the core principles and values deemed essential for justice and legal integrity.

4. Theories of Customary Law

The term **adat** is a translation of the Dutch term **adat recht**. As Yanis notes, “The term adat recht is not widely understood in terms of its origin among experts who use it. Despite this, the term adat recht has not been widely questioned by academics or other circles up to the present day.”²⁵ When discussing local institutions or customary law, it is important to first understand what local institutions entail. According to the General Dictionary of the Indonesian Language, a local institution is defined as “a system of official social behavior, along with customs and norms that regulate this behavior and all its components, designed to meet various complex needs within society.”²⁶

Legal anthropologists often equate the term **institution** with **instelling** (institution) or **institution**. However, Koentjaraningrat distinguishes between these concepts, defining **institution** as “a body or organization,” while **institution** refers to “a system of norms.”²⁷

According to Malinowski, as cited by Hilman Hadikusuma, social institutions are defined as “a group of people united (organized) for a specific purpose. To achieve this goal, such institutions: a) utilize material and technical resources; b) make reasonable efforts; c) uphold certain values (such as ethics and beliefs); and d) consistently perform predictable actions.”²⁸

In the view of Soerjono Soekanto, social institutions serve the following functions:²⁹

- a. Providing Guidelines:** Social institutions offer guidance to community members on how to behave or respond to societal issues, particularly those related to basic needs.
- b. Maintaining Community Needs:** They are responsible for addressing and sustaining the needs of the community they serve.

²⁴ Soerjono Soekanto and Otje Salman, “Disiplin Hukum Dan Disiplin Sosiologi” (Jakarta: Rajawali Press, 1987), pg. 13.

²⁵ Yanis Maladi, “Antara Hukum Adat Dan Penciptaan Hukum Oleh Hakim,” *Judge Made Law*, 2009., pg. 21.

²⁶ WJS Poerwadarminta, *Kamus Umum Bahasa Indonesia* (Cet. XI, PN. Balai Pustaka, Jakarta, 1999), pg. 767.

²⁷ Hilman Hadikusuma, *Hukum Perkawinan Adat Dengan Adat Istiadat Dan Upacara Adatnya* (Citra Aditya Bakti, Bandung, 2003), pg. 80.

²⁸ Hadikusuma..

²⁹ Soerjono Soekanto, “Pokok-Pokok Sosiologi Hukum,” *Rajawali Pers*, 1989., pg. 68.

- c. Facilitating Social Control:** Social institutions provide mechanisms for the community to exercise social control, helping to regulate behavior and maintain order.

According to Gillin and Gillin, as cited by Soerjono Soekanto, social institutions can be classified as follows:³⁰

- a. **Developmental Perspective:** Institutions are categorized into **crescive institutions** and **enacted institutions**. Crescive institutions, or primary institutions, naturally evolve from the customs and traditions of society. In contrast, enacted institutions are deliberately established for specific purposes but are still grounded in societal practices.
- b. **Value System Perspective:** Institutions are divided into **basic institutions** and **subsidiary institutions**. Basic institutions are crucial for maintaining and preserving social order within the community, while subsidiary institutions are considered less important.
- c. **Community Acceptance Perspective:** Institutions are classified as either **approved or socially sanctioned institutions**, which are accepted by the community, or **unsanctioned institutions**, which are rejected by the community.
- d. **Spread and Reach Perspective:** The distinction between **general institutions** and **restricted institutions** arises when classification is based on their scope and distribution.
- e. **Functional Perspective:** There is a difference between **operative institutions**, which function to consolidate the patterns or procedures necessary to achieve the institution's goals, and **regulative institutions**, which aim to oversee conduct that is not an integral part of the institution itself.

2. DISCUSSION AND ANALYSIS

1. The Legal Status of Sasak Customary Marriage

Marriage, in its original sense, refers to a sexual relationship. However, in a more figurative (metaphorical) or legal context, Hanafi defines marriage as “a contract that legitimizes the sexual relationship between a man and a woman as husband and wife.”³¹ In Islamic law, marriage is known as **nikah**, which involves a sacred contract binding a man and a woman to establish a lawful relationship that aims to achieve a family life filled with affection and tranquility, following the conditions approved by Allah SWT. According to the Compilation of Islamic Law, “Marriage is a strong contract (in its *saqon gholidhan*) to obey Allah's commands and its implementation constitutes an act of worship. The goal of marriage is to create a household characterized by peace, love, and compassion (*sakinah, mawaddah, and rahmah*).”³²

According to Article 16 of the Indonesian Civil Code (KUH Perdata), “Marriage is a lawful union between a man and a woman for a long period.” In contrast, Law No. 1 of 1974, Article 1, states that “Marriage is a spiritual and physical bond between a man and a woman as husband and wife to form a family (household) that is happy and eternal, based on the belief in One Supreme God.” Sajuti Thalib defines marriage as “a sacred, strong, and enduring agreement for living together legally between a man and a woman,

³⁰ Soekanto., pg. 69

³¹ M Idris Hanafi dalam Ramulyo, *Hukum Perkawinan Islam* (Bumi Aksara, Jakarta, 2005)., pg.1

³² Hanafi dalam Ramulyo., pg. 4.

aimed at establishing a permanent, respectful, affectionate, and happy family.” Similarly, Rasyid Sulaiman³³ describes marriage as “a contract that legitimizes interaction and delineates rights, duties, and mutual assistance between a man and a woman who are not related by blood (non-mahram).” Ramulyo Idris³⁴ adds that “Marriage, in essence, is a form of union, and ‘akad’ (contract) refers to an agreement. Thus, the marriage contract is a sacred agreement to bind a woman and a man in marriage to form a happy and eternal family.” Finally, Haryono³⁵ states that “Marriage is a sacred agreement between a man and a woman to establish a happy family.”

The requirements for conducting a marriage are regulated by Law No. 1 of 1974, Articles 6 and 7. This legislation outlines two types of requirements for marriage: internal and external. **Internal Requirements** pertain to the parties entering into the marriage and include:

- a) **Consent of Both Parties:** Both individuals must agree to the marriage.
- b) **Parental Consent:** For individuals under the age of 21, consent from both parents is required.
- c) **Age Requirements:** The man must be at least 19 years old and the woman at least 16 years old. Exceptions may be granted by a court, district head, or regent.
- d) **Marital Status:** Both parties must not be currently married.
- e) **Waiting Period (Iddah):** A woman marrying for the second time must observe a waiting period. If the previous marriage ended in divorce, the waiting period is 90 days; if it ended in death, it is 130 days.

External Requirements relate to the formalities of the marriage process and include:

- a) **Notification:** A report must be submitted to the Marriage, Divorce, and Reconciliation Registrar.
- b) **Announcement:** This announcement, signed by the registrar, must include:
 - The names, ages, religions/beliefs, occupations, and addresses of the prospective spouses and their parents. It should also mention any previous spouses.
 - The date, time, and location of the marriage ceremony.

In the Indonesian Civil Code (KUH Perdata), the requirements for marriage are divided into two categories: a) material requirements, and b) formal requirements. **Material Requirements** pertain to the essential or substantive aspects of conducting a marriage. These requirements are further divided into:

- a. **Absolute Material Requirements:** These are conditions related to the individual’s status that must be observed for marriage in general. They include:
 - 1) **Monogamy:** A man may have only one wife, and a woman may have only one husband (Article 27 BW).
 - 2) **Mutual Consent:** Both husband and wife must agree to the marriage (Article 28 KUH Perdata).
 - 3) **Minimum Age Requirement:** The minimum age for marriage is 18 for men and 15 for women (Article 29 KUH Perdata).
 - 4) **Waiting Period for Remarriage:** A woman who has previously been married must observe a waiting period of 300 days after the dissolution of her previous marriage before remarriage (Article 34 KUH Perdata).
 - 5) **Parental or Guardian Consent:** For minors who have never been married, temporary permission from parents or guardians is required (Articles 35 to 49 KUH Perdata).

33 Sulaiman Rasyid, “Fiqh Islam, Cet-80,” *Bandung: Sinar Baru*, 2017., pg. 9

34 Romulyo Idris, *Op. Cit.*, pg. 1.

35 Haryono, dalam *Ibid*, pg. 243.

b. Relative Material Requirements: These are prohibitions that prevent an individual from marrying certain persons. The prohibitions include:

- 1) **Close Kinship:** Marriage is prohibited with individuals who are closely related by blood or marriage.
- 2) **Adultery:** Marriage is prohibited with individuals involved in an adulterous relationship.
- 3) **Renewal of Marriage Post-Divorce:** Marriage is prohibited to renew a marriage within one year after a divorce.

Formal Requirements are related to the formalities involved in the conduct of a marriage. These requirements are divided into two stages:

- a. **Pre-Marriage Requirements:** a) **Notification and Announcement of Intent to Marry** (Articles 50 to 51 of the Indonesian Civil Code (KUHPerdata)): The notification of intent to marry must be submitted to the Civil Registration Officer. The announcement of the intent to marry must be made before the marriage takes place by posting the notice on the main door of the building where the Civil Registration records are maintained for 10 days. The purpose of this announcement is to inform any interested parties who may have legitimate reasons to object to the marriage. This serves as a community oversight (control) mechanism to ensure that any impediments to the marriage that might have escaped the attention of the Civil Registration Officer are brought to light.
- b. **Requirements to be Met During the Marriage Ceremony:** If all internal, external, material, and formal requirements are met, the marriage can proceed. The moment of marriage is considered valid when:

When these pre-marriage and concurrent marriage requirements, along with both material and formal criteria, are fulfilled, the marriage can be legally conducted.

- a. Conducted according to religious and individual beliefs; and
- b. Registered by legal regulations (Article 2 of Law No. 1 of 1974).

The purpose of Article 2, paragraph (1) of Law No. 1 of 1974, is to prevent legal conflicts among customary law, religious law, and intergroup law.

The objectives of marriage registration are:

- a. **Clarity of the Marriage Event:** To ensure that the marriage event is clear to all parties involved and to others.
- b. **Evidence:** To serve as proof for the children in the future, particularly in case of disputes among biological or step-siblings.
- c. **Basis for Allowance Payments:** To provide a basis for spousal allowance payments, particularly for civil servants.

The position of marriage as a “spiritual bond” signifies a union formed through the mutual and sincere willingness of a man and a woman to live together as husband and wife.³⁶ For the Sasak community, marriage is not merely a bond between two individuals with new duties and responsibilities towards each other, but it also encompasses sociological responsibilities towards their community. Therefore, marriage, as in other societies, is considered sacred by the Sasak community, and its execution is carried out with solemnity, sanctity, and grand celebrations. One common form of marriage among the Sasak people is “Merarik” (elopement marriage). In the Sasak tribe, marriage entails more than just the mutual obligations and responsibilities between two individuals.

36 Riduan Syahrani, “Seluk Beluk Dan Asas-Asas Hukum Perdata,” 1989., hal.67.

It also carries a societal responsibility, whereby the married couple is bound to fulfill certain duties towards their society.³⁷

The practice of Merarik marriage has legal implications. For instance, in a Merarik marriage, the “izab kabul” (marriage contract) is often conducted without the presence of an official from the Office of Religious Affairs (KUA) and prior registration with either the KUA or the Civil Registration Office. The marriage registration typically takes place several days after the marriage ceremony. According to the Marriage Law, marriages should be conducted and recorded by the Office of Religious Affairs (KUA) or the Civil Registration Office (CAPIL) for non-Muslims. However, such marriages are still considered valid within the Sasak community.

2. Regulation of Marriage According to The Sasak Customary Law

Sasak marriage customs have experienced significant distortion due to the influx of new values, both from religion (Islam) and Western influences. However, these customs have not disappeared entirely and can still be observed in regions that adhere strongly to traditional practices. In more religious and modern areas, these customs often serve as mere formalities. Within the Sasak community, there are four fundamental principles inherent in the practice of “merariq” (elopement marriage) on the island of Lombok: a) The prestige of the woman’s family; b) The superiority of men and the inferiority of women; c) Egalitarianism; and d) Commercial value, indicating a bargaining aspect.³⁸

There are three traditional Sasak marriage methods used by the community as a process toward matrimony: a) Perondongan, b) Memadik, and c) Merariq.³⁹ Each of these marriage processes can be explained as follows:

a. Perondongan (Arranged Marriage)

Perondongan, also known as **arranged marriage**, is a traditional method of matrimony among the Sasak people. This practice was prevalent among the Sasak community in the past. Parents would arrange marriages for their children for several reasons:

- 1) Purification of Lineage:** This reason primarily pertains to noble families who wish to maintain the purity of their lineage. They are particularly cautious about mixing their bloodline with others, especially those from lower social statuses.
- 2) Strengthening Friendships:** Parents often arrange marriages to solidify and perpetuate friendships between the families of the bride and groom. This method served as a means of fostering strong inter-family relationships.
- 3) Preventing Colonial Exploitation:** During the colonial era, particularly under Japanese rule, arranged marriages served as a preventive measure against the forced conscription of local girls as concubines by Japanese soldiers. Since unmarried girls or those without engagement ties were often taken, families arranged marriages for their daughters from a young age to protect them.

These historical reasons underscore the social and cultural significance of perondongan in Sasak society, reflecting deep-rooted concerns about lineage, social bonds, and protection against external threats. This type of marriage, known as **kawin tadong** (preventive marriage), was a strategic response to protect young girls from being taken by Japanese soldiers during the occupation. Once a girl was engaged

37 I Ketut Sudantra and I Gusti Ngurah Dharma Laksana, “Di Balik Prevalensi Perkawinan Usia Anak Yang Menggelisahkan: Hukum Negara Versus Hukum Adat,” *Jurnal IUS Kajian Hukum dan Keadilan* 7, no. 1 (2019): 56–72.

38 Wawancara, Lalu Ranggalawe Tokoh Adat Desa Batu Jai, tanggal 26 Juli 2024.

39 Wawancara, Lalu Ranggalawe Tokoh Adat Desa Batu Jai, tanggal 26 Juli 2024.

or married, Japanese soldiers would not take her. The first and second reasons for arranged marriages were the most common. Typically, these marriages were arranged within the same family lineage, often between cousins, which is referred to in Sasak as **pisak**. Arranged marriages could begin in childhood or occur as children reach adulthood, entirely based on parental agreements. In arranged marriages within the Sasak community, three methods are commonly employed:

- 1) **Formal Marriage with Separate Living Arrangements:** After the parents reach an agreement, a formal marriage ceremony is held, similar to that of adults. However, even though the couple is legally married, they are not allowed to live together as husband and wife. They continue to reside with their respective parents until they reach adulthood (*aqil balig*). This early marriage effectively binds the children in a marital union, but the couple will only start living together as spouses when they come of age.
- 2) **Engagement Only:** In this method, the children are not formally married but are engaged. The engagement serves the same purpose as the formal marriage in the first method, establishing a commitment that the children will be married according to the proper customs once they reach adulthood.
- 3) **Public Announcement of Engagement:** In this approach, there is no formal marriage or engagement ceremony. Instead, the arrangement is publicly announced, indicating that the children are betrothed. The formalities of marriage will only be carried out once the children are considered to have reached adulthood.

The Indonesian people's inclination towards marriage is still in conflict with intellectual comprehension. Therefore, it is crucial to consider the historical context of the marriage age from an Islamic perspective. This evaluation is necessary to assess the regulations regarding the minimum age for marriage in Islamic family laws in Indonesia and other Muslim countries. Gawronski, as cited by Akh. Minhaji in his work Ahmad Masfulul Fuad, defines history as the endeavor to comprehend all aspects of human existence and civilization⁴⁰.

If a child who has been arranged to marry later refuses to proceed with the marriage, the parents may compel them to continue with the arrangement, leading to the practice of forced marriage. However, if the child persists in their refusal, the parents might resort to expulsion, sending the child to a specific location or village. This expulsion is known as "*bolang*" (or "*teteh*" / "*buang*"). To prevent this, a practice called *pemingitan* (or "*pingit*") is employed, which involves restricting, particularly for girls who have been betrothed or subjected to arranged marriages, from leaving the house. This mechanism eventually gave rise to the tradition of *pingit*. Over time, this practice of *pingit* expanded to include all girls, whether they were betrothed or not, for various reasons. The reasons for implementing *pemingitan* include: 1) **Preventing Abduction:** To ensure that the girl is not abducted by another man. 2) **Avoiding Immoral Incidents:** To prevent situations that could lead to scandalous behavior, this might bring shame to the family. Thus, the primary goal of the *pemingitan* is to protect women from negative circumstances or situations that could bring disgrace to the family.

b. *Memadik* (Engaged Marriage)

The method of marriage known as "**memadik**" is quite similar to the "proposing" system used elsewhere. After the prospective bride and groom agree to marry, the groom will inform his parents and seek permission to formally propose to the bride's

40 Ulf Azizah and Nur Wahid, "Historisitas Dan Tujuan Aturan Umur Minimal Perkawinan Dalam Perundang-Undangan Keluarga Islam Di Indonesia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 2019, 163–77.

parents. In practice, this process often involves a lengthy, complex, and cumbersome procedure, which can cause frustration and irritation for the couple, sometimes leading to failure. As a result, this method is generally unpopular. However, in religiously devout communities or urban areas, this system is more commonly practiced.

c. *Merariq* (Elopement)

The “**merariq**” method (which can be equated with the term “**elopement**”) is a popular approach to marriage within the Sasak community. Despite its significant risks, this method remains commonly practiced among the Sasak people even today. Merariq is considered the initial step in the lengthy process of marriage. It is often associated with the act of “kidnapping” a woman (whether a young girl or a widow), meaning that a man takes a woman away to make her his wife. Therefore, the act of “kidnapping” (or taking away) a woman is not perceived as a crime in the context of merariq, contrary to the misunderstanding or misinterpretation held by those who do not fully grasp the essence of merariq. The philosophy of **merariq**, as commonly understood, represents a form of “respect” towards the dignity of women within Sasak society. For them, women are not viewed as objects to be bargained for or requested. By eloping (or taking away) a girl, the man aims to demonstrate his courage and loyalty as a prospective husband, willing to risk his life for his future wife. This act signifies a high level of responsibility to the public, showing that the man is ready to make both moral and material sacrifices. In contemporary practice, the term **merariq** has become synonymous with marriage, regardless of whether it is carried out through elopement or a formal proposal. Within Sasak society, there are at least four fundamental principles inherent in the practice of merariq (elopement) on Lombok Island: a) The prestige of the bride’s family; b) The superiority of men and the inferiority of women; c) Egalitarianism; d) Commercial value: having bargaining power.⁴¹

In the context of marriage in the Sasak community, which is one of the tribes in Lombok, Indonesia, customary law and national law often interact in a complex way. Some important aspects of Sasak customary law in marriage include rituals and ceremonies, ownership, Treasury, and gender roles.

The Marriage Act (Act No. 1 of 1974) and other related regulations provide a more general legal framework for marriage in Indonesian national law. Some of the main principles of national law include marriage registration, which mandates the official registration of marriages in the civil register as a prerequisite for legal recognition of marriage. Equality of Rights: National law emphasizes the principle of equality between husband and wife in marriage, which may differ from more specific customary rules. And Agreement and Age: National law establishes the minimum age for marriage and the consent of the parties concerned, including the prohibition of marriage below the specified age.

In practice, Sasak customary law and national law often interact in the following ways:

- **Adulterous Enforcement:** The national legal framework frequently implements Sasak customary law. For instance, despite the significance of customary rituals, national law still requires official registration of marriages for legal recognition.
- **Adjustment and compromise:** Sometimes, there is an adjustment between customary law and national law. For example, custom may require a change in order to conform

41 Wawancara, Raden rais *Tokoh Adat Sasaks*, tanggal 22 Juli 2024.

to the provisions of national law, such as adjusting the age of marriage or obtaining formal consent from both parties.

- Conflict and conflict: In some cases, there may be conflict between customary law and national law. For example, if Sasak customs have different rules on the age of marriage or the division of inheritance, it may be contrary to more general national laws.

Sasak customary law and Indonesian national law are two areas that frequently complement each other but can also be contradictory. Common law provides guidance on rituals and traditions, while national law provides a more universal legal framework and standards. It is crucial to integrate the two to guarantee the legal recognition of marriages in both customary and national law contexts.⁴²

3. CONCLUSION

The legal status of marriage for the Sasak community on Lombok Island is considered fully valid if it adheres to three legal pathways: customary law, religious law, and state law. According to Sasak customary law, the practice of *merariq* (elopement) is grounded in a philosophical basis, where there exists a principle that can be represented as a conceptual root, potentially linked to the philosophical foundation of elopement.

The Ministry of Religious Affairs, particularly the Office of Religious Affairs (KUA), is expected to engage more actively in fieldwork to socialize and increase the intensity of legal education, especially regarding marriage and the procedures for lawful marriage under national law, even when involving elopement. Additionally, traditional leaders, religious figures, and community leaders in Lombok should work on developing a standardized regulation (*Awig-awig*) regarding *merariq*, aiming for a consistent application across Lombok.

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⁴² Anwar Sanusi, "ANALISA DIALEKTIK RELEVANSI HUKUM ADAT TERHADAP HUKUM NASIONAL (Analisis Yuridis Normatif Terhadap Problematika Larangan Perkawinan Antara Masyarakat Desa Mirah Dan Golan Oleh Hukum Adat Ditinjau Dari UU No. 1 Tahun 1974 Tentang Perkawinan)" (Universitas Muhammadiyah Ponorogo, 2020).

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