

# Human Rights and Its Contested Legal Paradigm: A Case Study of Bride Kidnapping in Sumba

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## Abstract

This article examines the philosophical foundation of the tension between two contested legal paradigms, namely the Sociological Jurisprudence and Historical School of Jurisprudence, and how the contestation affects human rights discourse in Indonesia. Sociological jurisprudence perceives law as a tool of social engineering, while the Historical School of Jurisprudence argues that the development of law is a subconscious and organic process. Such contested legal paradigms are relevant to the case of “kawin tangkap” or bride kidnapping in Sumba, East Nusa Tenggara Indonesia. This is certainly problematic from the human rights perspective, as it is contradictory to the protection of women and children. However, like in some other traditions, the practice has been continuously preserved in local communities. The article employs legal anthropology research methods to delve into the symbols and meanings embedded within the customary laws obeyed by local communities. Additionally, this research utilizes legal philosophy methodologies to scrutinize paradigmatic disputes among schools of thought and how these disputes affect the rights of women. The study also investigates variances in perspectives concerning customary law, state law, and human rights, particularly in the context of examining the tradition of captive bride kidnapping. The challenge lies in how human rights can be employed to foster a gradual shift away from deeply ingrained patriarchal cultural norms and practices, with the aim of enhancing the protection of women’s and children’s rights, all while preserving customary laws and the harmony of local communities. This article endeavors to address this challenge by advocating for effective communication strategies that encourage local communities to embrace human rights principles and abide by the law, driven by rational awareness. The findings from this research conscientiously raise awareness about human rights within local communities through effective legal communication, without disrupting the existing local order.

Keywords: *Human Rights, Historical School of Jurisprudence, Bride Kidnapping, Sociological Jurisprudence, Communication.*

## I. INTRODUCTION

Viewed from socio-legal perspectives, it is an accepted perception that the living law in society is closely related to culture. There is a strong connection between the living law in a society that leaves “open gaps” and allowing violence to occur against women and patriarchal culture.<sup>1</sup> At the same time, the enforceability of law depends primarily on the legal culture in society. One of the best examples of law and cultural dynamic connection is bride kidnapping in Sumba Southeast Nusa Indonesia in which the state does not prosecute the perpetrator who kidnaps the bride and further forces her to have a non-consensual marriage.<sup>2</sup>

The main argument from Sumba people who practice bride kidnapping is that this tradition has been practiced for a long time without having violent roots against women. Yet, this article believes that the concept of cultural “violence” aims to engage in a dialogue with two distinct schools of legal thought: the historical school of jurisprudence and sociological jurisprudence. These two schools represent different approaches to the role of law in society. The historical school of jurisprudence wants to maintain traditional values that live in society, while sociological jurisprudence wants to change traditional behavior and values through legal engineering.<sup>3</sup>

In June 2020, a video went viral on YouTube showing a young woman in Sumba, an island in eastern Indonesia, being abducted by a group of men to be forced into marriage, in an act known as “kawin tangkap” (bride kidnapping) in the local tradition. The video evoked a strong reaction from gender activists, demanding that the police arrest perpetrators involved in the act. The Minister of Women’s Empowerment and Child Protection, I Gusti Ayu Bintang Darmawati, herself spoke out against the practice of bride kidnapping in Sumba as an act of violence and abuse of women. Bintang appealed to the police to arrest the perpetrators of the bride kidnapping.<sup>4</sup> Bride kidnapping can be classified as a criminal offense against women based on Law No. 12/2022 on Sexual Violence Crimes. One of the main reasons that bride kidnapping violates human rights is that the marriage is held without the consent of and through coercing one or both parties.<sup>5</sup> This issue is a crucial topic that has been discussed in

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1 Gad Barzilai, “Culture of Patriarchy in Law: Violence from Antiquity to Modernity” (2004) 38:4 *Law & Society Review* 867–883.

2 Population Matters, “No Consent: No Choice But to Marry Their KidnapperS”, (2023), online: *Population Matters* <<https://populationmatters.org/news/2023/09/no-consent-no-choice-but-to-marry-their-kidnappers/>>.

3 Brian Z Tamanaha, “Sociological Jurisprudence Past and Present” (2020) 45:2 *Law & Social Inquiry* 493–520. Compare with Loren Eldridge, “Gone and forgotten: Vinogradoff’s historical jurisprudence” (2021) 41:2 *Legal Studies* 194–213.

4 Detik News, “Kawin Tangkap Jadi Kontroversi, Jangan Sampai Adat Langgar Hak Asasi”, (2020), online: <<https://news.detik.com/berita/d-5074821/kawin-tangkap-jadi-kontroversi-jangan-sampai-adat-langgar-hak-asasi/2>>.

5 Aisha K Gill & Sundari Anintha, “Introduction: Framing Forced Marriage as a Form of Violence Against Women” in *Forced Marriage: Introducing a Social Justice and Human Rights Perspective* (Zed Books, 2011) at 2.

various disciplines i.e., sociology, psychology, public policy, and international relations. Bride kidnapping discourses are mostly associated with human rights violations, women's rights issues, social fairness and equity, multiculturalism, and universalism perspectives.<sup>6</sup> It might be true that the process of bride kidnapping does not necessarily involve violence against women as victims of this practice. However, one of the most common concerns is that the victim may be at risk of being forced to endure continuous coercion due to the tradition of subordination in Indonesian modern society.

Through this case study, this article seeks to consider the issue of bride kidnapping from the perspective of contradicting legal paradigms, namely the historical school of jurisprudence<sup>7</sup> which tends to take sides with customary law *vis-à-vis* sociological jurisprudence<sup>8</sup> which views law as a means for changing or engineering social behavior referred to as social engineering. The sociological jurisprudence will be applied to examine the relationship between culture and society which drove the establishment of customary law on bride kidnapping in Sumba, Indonesia. It will also be used to analyse the social context and consequence of the practice of bride kidnapping against women.

Data in this article are collected based on field research and literature from relevant sources. Data from field research come from interviews conducted in Wai Galli, West Sumba, and Anakalang, Central Sumba (2020 - 2021) with couples who were married through bride kidnapping, with the perpetrators (men) and women as "victims" of bride kidnapping.<sup>9</sup> The author also engaged in informal interactions with the Hamba Praing Village community to get a comprehensive understanding of the practice of bride kidnapping. The empirical data from interviews are meant to provide analysis of the phenomenon of bride kidnapping as part of cultural norms that transcend into normative aspects of the Sumba community. The author uses these data to examine how the

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6 *Ibid.*

7 In Indonesia, local law is perceived as living wisdom and living law that is often underestimated when the legal system enters the modern legal system era. The historical school of jurisprudence is used by academics who want to preserve customary law as the legal stream to defend the existence of customary law (Putro, 2011, 87-89). In the colonial era, European jurist's law was the only system of rules that was worthily viewed as a "law". "The *adat* law of the population may be usable for the good-natured, 'patriarchal' administration of justice by a government official, it is absolutely insufficient for the administration of justice 'funded on juridical principles' of the judge educated in the European school." This idea was strongly rejected by Van Vollenhoven. He argued that the inferior view against *adat* law is not supported with sufficient evidence. In his article entitled "No jurist's law for the native", Van Vollenhoven revealed that the diversity level of the law in the Netherlands Indies was extremely high which meant that there was difficulty in handling those who were charged by the administration of justice. Yet, unification was not suggested since diverse societies need various legal systems. (Bedner, 2021, 370-371).

8 In Indonesia, the teachings of Sociological jurisprudence were first introduced by Harvard Law School alumnus, Mochtar Kusumaatmadja by popularizing "law as a tool of social engineering".

9 The term "victim" emerged from interviews with Rambu Dai Mami and Pedi Jola, who acknowledged being taken away as part of the kidnapping marriage tradition. However, according to the custom leader, they are not considered "victims" but rather integral participants in the marriage tradition of Sumba. The use of the term "victim" by writers reflects the perspective of women who perceive themselves as such.

dynamic interaction between culture and society has evolved into a complex interplay of symbolic meanings that underpin the understanding of law within a particular community.<sup>10</sup> In analysing paradigmatic disputes and perspectives on customary law, state law, and human rights, the author also employed legal philosophy methods to build a nuanced understanding of the complexities surrounding the tradition of bride kidnapping, shedding light on the intricacies inherent in the intersection of legal systems and cultural practices.<sup>11</sup>

## II. THE PRACTICE OF BRIDE KIDNAPPING

It should be noted that the tradition of bride kidnapping is not unique. Some countries such as Kyrgyzstan,<sup>12</sup> Kazakhstan,<sup>13</sup> Rwanda,<sup>14</sup> Kenya,<sup>15</sup> Somalia,<sup>16</sup> and Sudan<sup>17</sup> still re-imagine bride kidnapping as a tradition of these countries.<sup>18</sup> It is therefore unsurprising that the practice of these marriages has attracted scholars to examine this tradition as part of their effort to understand the gender-based violence impacts against women. Some

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10 Tapi Omas Ihromi, “Beberapa Catatan Mengenai Metode Kasus Sengketa yang Digunakan Dalam Antropologi Hukum” in *Antropologi Hukum: Sebuah Bunga Rampai* (Jakarta: Yayasan Obor Indonesia, 1993) at 34.

11 The interviewees included Hamarato (Pasunga Village) and Hengu Kaka (Wai Galli Village). The individuals interviewed Dangu Duka and Pedi Jola had experienced marriage through the kidnapping marriage tradition. To gain insights into customary law in Sumba, the researchers sought the expertise of Rambu Hada Indah, a lecturer in Customary Law at Wira Wacana Christian University. Additionally, from a human rights perspective, interviews were conducted with women activists Martha Hebi and Rambu Dai Mami.

12 Ahmed Ragib Chowdhury, “A Deplorable Custom Repressing Women in Kyrgyzstan” (2020) Dhaka Law Review, online: <<https://www.dhakalawreview.org/blog/2020/10/bride-kidnapping-a-deplorable-custom-repressing-women-in-kyrgyzstan-4991>>. See also: BBC, “Kyrgyzstan: Fury over death of ‘bride kidnapping’ victim”, (2021), online: *BBC News* <<https://www.bbc.com/news/world-asia-56675201>>; United Nations, “New law in Kyrgyzstan toughens penalties for bride kidnapping”, online: *United Nations* <<https://www.un.org/youthenvoy/2013/09/new-law-in-kyrgyzstan-toughens-penalties-for-bride-kidnapping/>>; LM Handrahan, “Implications of International Human Rights Law and Bride Kidnapping in Kyrgyzstan” (2000) XVI *The Fletcher Journal of Development Studies* 1-13.

13 Edward Snajdr, “Modern Clan Politics: The Power of ‘Blood’ in Kazakhstan and Beyond” (2009) 1082:2 *American Anthropologist* 436-437.

14 See also: Anuja Jayaraman, Tesfayi Gebreselassie & S Chandrasekhar, “Effect of Conflict on Age at Marriage and Age at First Birth in Rwanda” (2009) 28:5 *Population Research and Policy Review* 551-567.

15 See also: Ajwang Warriia, “Child Marriages, Child Protection and Sustainable Development in Kenya: Is Legislation Sufficient?” (2019) 23:2 *African Journal of Reproductive Health* 121-133.

16 See: Lewis Tia, “I Don’t: An Argument Against Using International Intervention to Eliminate Child Marriage in Somalia” (2022) 54:1 *The George Washington International Law Review* 157-177.

17 See: *Exchanging Daughters for Livestock: Child Marriage In South Sudan: In South Sudan, girls who resist marriage face violence from their own families, report Janet Walsh and Gauri van Gulik of Human Rights Watch*, The Daily Beast, by Gauri van Gulik & Janet Walsh, The Daily Beast (The Newsweek/Daily Beast Company LLC, 2013).

18 See: Makho Nkosi, “Bride abduction in KwaZulu-Natal schools and its effects on education” (2009) 80 *Gender Violence In Education* 109-114.

scholars provide similar definitions of bride kidnapping from various approaches. Tew<sup>19</sup>, for example, describes it as matrimony that is coerced by one of the parties through physical and psychological threats that cause another party to partially or fully lose the right to have free consent. In an equivalent manner to the French Parliament's definition, bride kidnapping refers to taking one's freedom in choosing a spouse or being self-partnered.<sup>20</sup> Further, bride kidnapping is frequently regarded as one of the negative outcomes produced by a "backward" and religious culture.<sup>21</sup>

Like any other community that practices bride kidnapping, the local community of Sumba does not regard bride kidnapping as an offense but rather they view it as part of customary law. Hamarato<sup>22</sup>, the leader of the customary law community in Pasunga Village in Central Sumba, disagrees with the view that perpetrators of bride kidnapping should be subject to criminal prosecution under charges of abduction or duress because bride kidnapping is in fact part of the custom.<sup>23</sup>

Hengu Kaka, the leader of the customary law community of Wai Galli Village in the West Sumba District, similarly asserts that bride kidnapping does not denigrate women. He further argues that bride kidnapping augments the social standing of the bride's family because in a bride kidnapping, the groom must pay a higher "belis" (dowry) compared to the dowry payable in the customary marriage proposal process. In a bride kidnapping, the bride's family is free to determine any amount of cattle that needs to be paid by the groom as *belis* without negotiation.<sup>24</sup>

Rambu Hada, a scholar in Sumba, explained that bride kidnapping is referred to as such because it occurs without the bride's consent. The bride is stolen or kidnapped at home, in the street, in the marketplace, or in the garden. Bride kidnapping is referred to in the local dialect of West Sumba as "Kedu Ngiddi" and in the Central Sumba dialect as "Pitti Rambang".<sup>25</sup> The reason for bride kidnapping is that the bride does not wish to marry the groom. At the same time, there is an agreement between the bride's and the groom's respective families for their children to marry.<sup>26</sup>

These various perspectives assert that defining and categorizing bride kidnapping as

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19 Yvonne Tew, "And They Call It Puppy Love: Young Love, Kidnapping Marriage, and Immigration Rules" (2012) 71:1 *The Cambridge Law Journal* at 18.

20 Brigitte Clark & Claudina Richards, "The Prevention and Prohibition of Forced Marriages: A Comparative Approach" (2008) 57:3 *International & Comparative Law Quarterly* at 501.

21 Khatidja Chantler, Geetanjali Gangoli & Marianne Hester, "Kidnapping Marriage In The UK: Religious, Cultural, Economic, Or State Violence?" (2009) 29:4 *Critical Socio Policy* at 587.

22 *Adat* leader (Sumbanese: *rato*) Desa Pasunga, Sumba Tengah.

23 Hamarato, Interview, (Sumba, Indonesia, 2020).

24 Hengu Kaka, Interview (Sumba, Indonesia, 2020).

25 "The 'Pitti Rambang' tradition, a form of kidnapping marriage, persists in contemporary Central Sumba. This tradition involves capturing women for marriage with the condition of obtaining approval from the woman's family, albeit without her knowledge. Similarly, in West Sumba Regency, the 'Kedu Ngiddi' marriage tradition unfolds as men, facing rejection in their intention to marry a woman, enlist the assistance of clan relatives to take her away.

26 Rambu Hada Indah, Interview (Sumba, Indonesia, 2021).

a crime against women is not an easy task. In understanding this view, the practice of bride kidnapping should be considered as part of a custom or tradition that portrays the social and cultural rights of the Sumba people. Custom or tradition should be defined by two categories; those that are habits and those that are regarded as convention.<sup>27</sup> Habits are often set based on circumstances, however convention is not only based on social interest.<sup>28</sup> This idea suggests that individual and social customs cannot be clearly separated. Yet, the local community believes that practicing a custom is the ultimate way to preserve culture.<sup>29</sup>

In bride kidnapping cases, the police find themselves in a dilemmatic position. On the one hand, they must face the local community which strongly adheres to customary law, and on the other hand, the demands of gender activists to prosecute perpetrators of bride kidnapping. In the above-reported incident, the police ultimately released the perpetrator because the young woman's family agreed to settle the case through customary law.<sup>30</sup> The release of the perpetrator and the agreement from the bride's family assert human rights with reference to women's rights in an Indonesian context and are not literally translated from the international human rights instruments.

In Sumba, the practice of bride abduction is a cultural as well as a legal issue. As a cultural issue, it involves the values developed and adhered to by the community concerned. The values including cultural and legal traditions that live in Sumba society transform into local practices which then evolutionarily perceive and establish a certain justice. From time to time, local practices came face to face with the national law and international law<sup>31</sup> which resulted in the development of Indonesian dynamic legal pluralism.<sup>32</sup> The process of addressing local customary law practices contributes to shaping national law; in one way or another, it also contributes to shaping international law, which is a form of customary law itself. The question arises: should customary law be preserved even when it brings injustice to certain people, in this case to women<sup>33</sup> who are forced into marriage through bride kidnapping practices? As the saying goes: Beauty lies in the eyes of the beholder; similarly, justice lies in the hearts of the beholder. Once women reach the level of awareness that being forced into marriage against their will or without informed consent is against the sense of justice, and thus something that can and must be changed, customary law must embark on the journey of preserving the best parts

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27 James Bernard Murphy, *The Philosophy of Customary Law* (Oxford University Press) at 15.

28 *Ibid.*

29 Grace Mbajiorgu, "The Paradox Between Customary Law" (2017) 14:2 Bangladesh e-Journal of Sociology at 18.

30 Magdalene, "Kawin Tangkap, Kekerasan, dan Tradisi yang Problematik", (2021), online: <<https://magdalene.co/story/kawin-tangkap-kekerasan-dan-tradisi-yang-problematik/>>.

31 United Nations, "UN statement on bride kidnapping and child marriage", (2018), online: *UN WOMEN*.

32 Lita Tyesta Addy Listya Wardhani, Muhammad Dzikirullah H Noho & Aga Natalis, "The adoption of various legal systems in Indonesia: an effort to initiate the prismatic Mixed Legal Systems" (2022) 8:1 Cogent Social Sciences 1-21.

33 The category of "women" in kidnapping marriage can refer to both adult women and children.

of local tradition and identity, while upholding human rights for women.

Hence this touches upon the issue of “adat” norms in bride kidnapping. In scholarly debates, the term “adat” is often used to refer to the traditional normative order in a specific part of Indonesia. Farmers, women, men, youth, rich and poor, elite and ordinary people on Sumba Island are all involved in *adat*, and they use the term in various situations and for different purposes.<sup>34</sup> Adat also represents a vaguely defined but powerful set of ideas or assumptions regarding what an ideal society should be. The problem scholars have with defining *adat* is not shared by Sumbanese, because there is simply no single translation for the word, and the concept is perceived so naturally, “the customs and rules of life that are followed of old, that assign each group and each individual an appropriate spot in the world and life; and it prescribes how to deal (communicate, behave) with people and objects”.<sup>35</sup> At present, the Sumbanese often use the term *adat* to refer to this variety of meanings, and in this article, I use the *adat* term as customary law.

### III. HOW TO LOCALIZE HUMAN RIGHTS IN THE BATTLE OF PERSPECTIVES

#### 1. The Battle of Legal Paradigms and Its Impact on Human Rights

Would it be correct to state that bride kidnapping is the mirror of the society in which it is practiced? There is a general view holding that law is a mirror of society, which functions to maintain social order.<sup>36</sup> Such a theory is based on two different, yet intertwined ideas:

“Every legal system stands in a close relationship to the ideas, aims, and purposes of society. Law reflects the intellectual, social, economic, and political climate of its time”.<sup>37</sup>

On law as a mirror of society, Ullmann offers the following comment:

“Nowhere is the spirit of an age better mirrored than in the theory of law.”

In abstract terms, H.L.A. Hart states that,

“The law of every modern state shows at a thousand points the influence

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34 Jacqueline AC Vel, “Strategic of Adat in Land-Acquisition Politics in East Sumba” 20 (5) *The Asia Pacific Journal of Anthropology* at 65.

35 Jacqueline AC Vel, *Uma Politics an Ethnography of Democratization in West Sumba, Indonesia* (Leiden: KITLV Press, 2019) at 436.

36 Brian Z Tamanaha, *A General Jurisprudence for Law and Society* (New York: Oxford University Press, 2006) at 1.

37 Steven Vago, *Law and Society* (Englewood Cliffs: NJ Prentice Hall, 1981) at 3.

of both the accepted social morality and wider moral ideas... The further ways in which law mirrors morality are myriad, and still insufficiently studied...”.<sup>38</sup>

On a more concrete note, Lawrence Friedman states as follows: “Legal systems do not float in some cultural void, free of space and time and social context; necessarily, they reflect what is happening in their societies. In the long run, they assume the shape of these societies, like a glove that molds itself to the shape of a person’s hand.”<sup>39</sup> On a similar note, legal realism exponent Oliver Wendell Holmes asserts, “This abstraction called the law, wherein, as in a magic mirror, we see reflected, not only our own lives but the lives of all men that have been.”<sup>40</sup>

In contrast to the above views, Tamanaha corrects the assumption that “law is always a mirror of society” by asserting that “law is (not) always a mirror of society.” In the reality of contemporary life, under globalization, citizens are subject not only to national and local laws. Rather, they are also subject to various rules that need to be ratified by their respective governments, for instance, rules adopted by the international community, including human rights.<sup>41</sup>

Similarly, Tamanaha notes the reduction in custom as a source of positive law, and the shift to procedural consent, for instance in the mechanism of democracy.<sup>42</sup> Based on the foregoing statement, the mirror theory would not be correct if it is understood in the absolute sense of the word.

In the Indonesian context, the law has historically developed out of four layers. The innermost layer consists of customary rules recognized as law by the communities concerned. The next layer consists of accepted religious rules. This is followed by a layer of legal provisions of the colonial ruler, whereas at the top layer, we can find the modern national law which is in the process of continuous development.<sup>43</sup> This plurality of law can sometimes play a complementary role in addressing, dealing with, and anticipating various issues in a complex society; however, it can sometimes also become

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38 Herbert Lionel Adolphus Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961) at 199. See also: John Gardner, “Hart on Legality, Justice and Morality” (2010) 1:2 *An International Journal of Legal and Political Thought* 253–265.

39 Lawrence Friedman, “Borders: On the Emerging Sociology of Transnational Law” (1996) 32 *Stanford Journal of International Law* 65 at 72. See also: István H Szilágyi, “Social Legal Consciousness or Legal Culture?” (2022) 7:2 *Public Governance, Administration and Finances Law Review* 5–39.

40 Oliver Wendell Holmes, *The Occasional Speeches of Justice Oliver Wendell Holmes* (Cambridge: Belknap Press of Harvard University Press, 1962) at 2. See also: Dan Priel, “Holmes’s ‘Path of the Law’ as Non-Analytic Jurisprudence” (2016) 35:1 *University of Queensland Law Journal* 57–73.

41 Tamanaha, *supra* note 36 at 115.

42 *Ibid* at 89, 96.

43 Adriaan Bedner, *Kajian Sosio-Legal (Socio-Legal Studies)* (Denpasar: Pustaka, 2012) at 119.



a source of tension.<sup>44</sup>

The issue in the case of bride kidnapping is not only a dispute between gender activists and customary community leaders; rather, it is also a battle of paradigms, particularly between the historical school of jurisprudence and sociological jurisprudence. The historical school of jurisprudence is of the view that the development of law is a subconscious and organic process. “Law is not made; rather, it grows and develops along with the development of society”.<sup>45</sup> According to von Savigny, *Volkgeist*, or the national spirit, is “unique, the highest mystical reality,” hence rather than being understood rationally, it needs to be perceived intuitively. *Volkgeist* is not designed, it comes into existence naturally as the biological heritage of people.<sup>46</sup>

At the same time, in another school of thought, the sociological jurisprudence paradigm calls for change by using law as a tool of social engineering. Law is identified with “technology, making it possible to apply the analogy of ‘engineering’” to law and society.<sup>47</sup>

The difference between the views of sociological jurisprudence and the historical school of jurisprudence can also be found in how law comes into existence. Sociological jurisprudence holds the view that law is made by design and is used as a means of social engineering; on the contrary, according to the historical school of jurisprudence, law grows along with the development of society. So, on the one hand, the law is perceived as always being one step behind in keeping up with social realities (*het recht hinkt achter de feiten aan*); according to the concept of law as a tool of social engineering, law is ahead of realities in society, and Pound expects judges to function as social engineers. “The task of the lawyer as ‘social engineer’, formulated a program of action, attempted to gear individual and social needs to the values of western democratic society.”<sup>48</sup> When the law is used as social engineering, it will certainly clash with the previously established traditions that insist on maintaining classic values. Thus, the tradition is shaken and “forced” to change through social engineering.<sup>49</sup>

In the context of bride kidnapping, several circles have proposed to use the law as a tool of social engineering by imposing criminal sanctions on perpetrators of bride kidnapping. The issue is that if the government were to adopt rules prohibiting bride

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44 Vlad-Mihai Arjoca, “The relationship between linguistic pluralism and legal pluralism” (2020) 67 *Revista de Stiinte Politice* 45-55.

45 Daniel Martin Katz et al, “Complex societies and the growth of the law” (2020) 10 (18737) *Scientific Reports*. The original language is German and translated by the author.

46 Michael David Alan Freeman, *Lyold's Introduction to Jurisprudence* (London: Sweet Maxwell, 2001) at 905. See also: Marius Andreescu & Andra Puran, “The Principles of Law: Metaphysical Rationality and Legal Normativity” (2023) *Challenges of the Knowledge Society* 358-367.

47 Roscoe Pound, *Jurisprudence* (New Jersey: The Lawbook Exchange, 2000) at 346-347.

48 Freeman, *supra* note 46 at 678.

49 See and compare with: Ahmad Qiram As-Suvi & Moh Zainullah, “Sociology of Law in the Perspective of Roscoe Pound and Donald Black and its Relevance in the Indonesian Context” (2022) 1:2 *Peradaban Journal of Law and Society* 83-95.

kidnapping accompanied by criminal sanctions, it would come into conflict with the traditional way of thinking which still strongly upholds the old values. Once the law is used as a tool of social engineering, for instance, if the police enforce the law against perpetrators, it is bound to go against long-standing traditions. Arguably the weakness of the law as a tool of the social engineering paradigm is that it conceives law as “technology” and thus it unsettles customary law by “compelling” it to change through social engineering. When it comes to the “power contest”, national law with its apparatus and organizations is more likely to prevail. However, this is not to say that in the long run national law is certain to prevail. While national law (formal text of written law) is the formally applicable law, deeply rooted “old traditions” continue to be practiced.

The issue of ‘bride-kidnapping’ and forced marriage is not unique to Sumba customary (*adat*) law. It has also been known in other parts of the world, in various cultures and communities, under many different terms such as “bride-abduction”, “bride theft”, and “forced marriage” such as in Kazakhstan, Cameroon, and other countries.<sup>50</sup> In Indonesia, the issue of ‘bride-kidnapping’ and forced marriage in Sumba is not unique because it has been part of the development of customary law for years. It may be noted that the practice of bride kidnapping in Indonesia and other countries has dealt both with customary law as well as human rights issues. As a customary law issue, it involves the values developed and adhered to by the concerned community. The values that live in society transpire in local practices. From time to time, local practices come face to face with human rights, particularly women’s rights.<sup>51</sup>

## 2. Bride Kidnapping from a Human Rights Perspective

Dangu Duka and Padi Jola, a married couple, have described their experience of bride kidnapping as follows. Dangu Duka, a man from the village of Wai Galli, Wanukaka, West Sumba, was 20 years old when he conducted a bride kidnapping. Before the act, a meeting was held between the groom’s family and the clan (*marga, kabihu*) to work out the details of the plan properly. Dangu Duka, accompanied by a dozen fellow young men carrying machetes and a big horse, left at dawn.<sup>52</sup>

Resembling a robbery, they came to the bride’s house carrying machetes. The bride’s father stood up in their way and defended his daughter from being abducted. The

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50 Sevara Azizova, *Bride-Kidnapping in Kazakhstan in Discourses of Law and Custom, Nationalism and Tradition, Kinship and Gender*. Thesis for Master of Arts in Gender Studies. Central European University Department of Gender Studies. Budapest, 2009, p. 18.

51 See also: Tamar Ezer, “Forging Path for Women’s Rights in Customary Law” (2016) 27:1 *University of Miami School of Law Institutional Repository* 65-86. Mikano Emmanuel Kiye, “Conflict Between Customary law and Human Rights in Cameroon: The Role of the Courts in Fostering an Equitably Gendered Society” (2015) 36:2 *African Study Monographs* 75-100.

52 Dangu Duka, Interview (Sumba, Indonesia, 2020).

bride who was going to be abducted, Pedi Jola who was 20 years old at the time, was asleep in her room. She was awakened by the noise coming from the commotion.<sup>53</sup> The groom's party then surrendered the machete and horse to the bride's father as a symbol of opening the door. Similarly, if the bride's uncle were there, he would also be given a machete.<sup>54</sup>

Dangu Duka's company then abducted Pedi Jola in her room. "I did not resist, I simply surrendered. I remember thinking to myself at the time that it must have been my fate to marry the person I was not in love with," recalls Pedi Jola. All along the way, the group of young men carrying Pedi Jola was singing a song in Sumba Language, the words of which in translation mean: "I am a man, you are man, but I am more of a man." Upon the arrival of the entourage at Dangu Duka's house, victory was announced by the sound of the beating of a gong.<sup>55</sup> As a ritual to calm the girl down and make her accept the groom, she was sprinkled with water previously prepared by reciting a mantra (magic water).<sup>56</sup> Three days later Pedi Jola's family visited the home of the groom's family bringing pig, ebony, and woven fabric (*kain tenun*). The purpose of the visit was to make sure that Pedi Jol was in good condition and to discuss "belis" (dowry payment) with the groom's family. The bride's family asked for 100 animals as *belis*.<sup>57</sup>

The groom's family invited all members of the family and the clan (*marga; kabihu*) to collect the total number of animals requested by the bride's family. On the third day, only after the customary procession was completed and the "belis" was paid, Dangu Duka and Pedi Jola were allowed to consummate the marriage. According to Pedi Jola's testimony, she got accustomed to living in the same house with her husband, and gradually developed a love for him. Dangu Duka and Pedi Jola have been married for 12 years now, and have 4 children.<sup>58</sup>

Rambu Dai Mami has had a different experience. According to her testimony, she has been abducted many times, to be forced into marriage with four different men, but as she outright refused to be married, she was released on each of those occasions. Her past experiences prepared Rambu Dai Mami to become a Women's Solidarity activist in Sumba. She has been widely known for actively advocating for raising awareness that bride kidnapping violates human rights and diminishes women's dignity.<sup>59</sup>

According to Rambu Dai Mami, in a culture based on patriarchy, women are viewed as objects, assets, and family or tribe property. The justification of the tradition of bride kidnapping is based on the belief in a marital tradition that women are objects in the

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53 Pedi Jola, Interview (Sumba, Indonesia, 2020).

54 Dangu Duka, Interview (Sumba, Indonesia, 2020).

55 Dangu Duka, Interview (Sumba, Indonesia, 2020).

56 Hengu Kaka, Interview (Sumba, Indonesia, 2020).

57 Dangu Duka, Interview (Sumba, Indonesia, 2020).

58 Pedi Jola, Interview (Sumba, Indonesia, 2020).

59 Rambu Dai Mami, Interview (Sumba, Indonesia, 2021).

marriage between two families.<sup>60</sup>

Rambu Dai Mami signals that there has been a shift in the meaning and practice of bride kidnapping which continues to take place to date, deviating from its originally intended meaning under custom. In the past, bride kidnapping used to be considered an elite practice, as people practicing it came from affluent families because bride kidnapping requires the payment of a greater amount of “belis” to the bride’s family. At present, bride kidnapping practices are utilized by a range of economic classes, and tend to be more inclined toward abduction and duress, as a result of which women, particularly women in Central Sumba, West Barat, and Southwest Sumba, live in fear nowadays.<sup>61</sup>

Below is the data on bride kidnappings that occurred from 2013 to 2021 collected by women's organizations. The case of bride kidnapping is similar to the iceberg phenomenon. Of course, more incidents of bride kidnappings are not reported because they are considered normal in society.

Total Victims	Forced to get married	Successfully escaped	Helped by other parties
20	2	16	2

Data Source: SOPAN Sumba, March 19 2021.

The table shows that most of the cases of “kawin tangkap” or bride kidnapping are resolved by using customary law.<sup>62</sup> Local activists and reformers consider bride kidnapping as a human rights violation. Further, gender violation is against human rights and is prohibited by the state.<sup>63</sup>

The feminist organizations i.e. Forum Perempuan Sumba/Foremba, Yayasan Wahana Komunikasi Wanita, Yayasan Sosial, LBH Sarnelli, PERUATI Sumba, SOPAN Sumba, AKSI PUAN Sumba, and Jaringan Perempuan Muda Sumba, insist that human rights should be incorporated into domestic law through legislation or judicial decision-making by imposing criminal sanctions on perpetrators of bride kidnapping. These organizations have provided legal and psychosocial support services for the victims of bride kidnapping and encouraged them to view their cases as a violation of their rights. Human rights must be part of local legal consciousness, but activists tell us that

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<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> The settlement of both families, comprising both women and men, reached an agreement in accordance with customs, determining the payment of “belis” (*dowry*). Women's NGOs actively protect women who have escaped from kidnapping marriage processes by assisting them in reporting to the police.

<sup>63</sup> Martha Hebi, et. al., Interview (Sumba, Indonesia, 2022).

knowledge about human rights in rural communities is very limited.<sup>64</sup>

Bride kidnapping is the product of a culture that is repeatedly created, replicated, and spread from generation to generation until it is seen as a normal and acceptable matter. Nonetheless, legal culture is dynamic, evolving simultaneously with societal consciousness. Thus, before creating a society's legal structure, it is critical to comprehend its nature. Human rights are universal, yet they are based on a variety of social contexts. Ultimately, human rights are fundamentally about people, not laws, which is why it is critical to comprehend societal forces. No matter how acceptable it may be in certain cultural circumstances, the practice of bride kidnapping still needs to be restrained since it violates children's human rights and dignity, including the right to be free from discrimination of any kind.

According to Lolo's research, bride kidnapping is akin to sexual assault and deprives women of their right to marry without the bride's voluntary consent. This layered violence has a psychological impact and can cause deep trauma for the victim and fear for other women.<sup>65</sup>

### 3. Synthesis: How Can Human Rights Change Patriarchal Perspectives Without Undermining Customary Law?

In such a context, synthesizing two opposite paradigms (sociological jurisprudence and historical school of jurisprudence) is done by questioning: how can human rights play a part in introducing gradual changes in traditional views and practices that are deeply rooted in the patriarchal system, and thus better at protecting women's human rights without damaging the customary law and disturbing the harmony of the society?<sup>66</sup> The author does not seek to endorse customary laws that openly infringe upon human rights; instead, the intention is to propose a strategy for incorporating human rights awareness into the consciousness of local communities. This strategy involves employing legal communication techniques without disrupting the existing local order. In other words, the gravity of legal reforms does not depend on the legislation but on the society itself. Thus, human rights concepts and approaches can be adapted to the local contexts as part of local legal awareness. At this point, the limitation standard of human rights applications without violating a certain right is as stipulated by General Comment Number 22 and Number 28 of the Human Rights Committee. Inequality in the enjoyment of rights by

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<sup>64</sup> *Ibid.*

<sup>65</sup> See: Irene Uumbu Lolo, "Dari Liturgi Baptisan Menuju Liturgi Kehidupan: Menjadi Gereja Bagi Perempuan Korban Kawin Tangkap" (2020) 6:2 *Kenosis: Jurnal Kajian Teologi* 216–237.

<sup>66</sup> See: Nicole Roughan, "The Nature of Customary Law: Perreau-Saussine, Amanda, and James Bernard Murphy (eds). 2007. *The Nature of customary law*. Cambridge: Cambridge University Press, 348 pp" (2009) 15:3 *Res Publica* 305–313.

women throughout the world is deeply embedded in tradition, history, and culture, including religious attitudes. States parties should ensure that traditional, historical, religious, or cultural attitudes are not used to justify violations of women's rights to equality before the law and to equal enjoyment of all Covenant rights.<sup>67</sup>

To begin with, human rights are about humans, and have no link with positive law. Thus, understanding the cultural issues within society should be addressed first. Occasionally, local people grasp the concept of gender inequality that is opposite to the standard of human rights. Related to this, Horii suggests reconceptualizing human rights frameworks by including perspectives from other sides and multi-cultural dialogues.<sup>68</sup> This would assist researchers and any organizations to avoid categorization. Only with this inclusive approach, human rights can be applied ethically and efficiently.

Bride kidnapping is often viewed by “outsiders” as inappropriate behavior that violates women's rights in choosing their spouses. In fact, however, for many Sumbanese, it is one of the dignified means to drive the economy and lift the status of the bride's family since the groom's family has prepared any amount of dowry requested by the bride.<sup>69</sup> This emphasizes that in pre-state societies, marriages are used to manage economic, political, ceremonial, and sexual activities.

Thus, marriage in Sumba is a complex term since it does not only involve the bride and the groom but also involves the family and the clans (*kabihu*) of the couple. Furthermore, it extends to their ancestors' spirits. Thus, the Sumbanese define marriage as an affiliation between the two clans. In this tradition, *belis*, the animals, are regarded as property that finally will be passed on from one clan to the other clans. In other words, the Sumbanese use marriage as one of the mediums to strengthen the affiliation between two clans. This affiliation is reflected in their communal activities i.e., traditional ceremonies, herding, land cultivation, etc.

Hence, the conception of women as an exchange in this alliance system is debatable, as women are not merely a means but are centrally involved in practicing the alliance within a society.<sup>70</sup> This central participation has formed a strong basis for familial and clan ties to support each other, and for survival mechanisms in the arid geographical features of Sumba Island.

In the “common” marriage tradition in Sumba, which does not involve forced marriage, negotiation between two families is represented by their spokesman. The

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67 *CCPR General Comment No. 28: Article 3 (Equality of Rights Between Men and Women)*. See also: Alberto Quintavalla & Klaus Heine, “Priorities and Human Rights” (2019) 23:4 *The international journal of human rights* 679–697.; Zainal Abidin Bagir et al, *Membatasi Tanpa Melanggar: Hak Kebebasan Beragama Atau Berkeyakinan* (Yogyakarta: CRCS UGM, 2019).

68 Hoko Horii, “A Blind Spot in International Human Rights Framework: A Space Between Tradition and Modernity Within the Child Marriage Discourse” (2020) 24:8 *The International Journal of Human Rights* at 1073.

69 Gayle S Rubin, *Deviations: A Gayle Rubin Reader* (Duke University Press, 2011) at 22.

70 *Ibid.*

negotiation is frequently found difficult in reaching a consensus on the number and the types of animals and “mamuli”<sup>71</sup> that the groom’s family has to prepare for the bride’s family. The number of animals requested is determined by the social status of the bride’s family in society. The higher the status, the more animals (buffalos, horses, and pigs) that the groom’s family has to prepare. The number of animals requested can be 30, 50, or up to hundreds. Currently, the number of animals is also influenced by the level of education and the title of the bride. The bride’s family will slaughter a couple of pigs, use the pigs’ blood to stamp the consensus, and have their meat as the feast for both families. Specifically, for a bride kidnapping, the groom’s family will prepare any amount of *belis* that the bride’s family requests. It means that negotiation is not necessary, and it lifts the dignity of the bride’s family.<sup>72</sup> This practice points out that socio-legal perspectives view the rules of living in society as closely related to its culture. The strong connection between rules and society creates an “open gap” allowing violation of women’s rights. At the same time, the enforceability of law depends to a great extent on the legal culture living in society itself. Further, it also serves as a means to address society’s interest in dealing with a dispute.<sup>73</sup>

The culture of consensus is based on the meeting of the minds on matters that are considered to be appropriate. The issue that arises is: who is involved in making an agreement? A question to Karl von Savigny could be: if the law is not made, who is in control of customary law? The author believes that if Karl Von Savigny was still alive today, he would prefer to leave such a question unanswered. By answering it, he would defeat his theory, because the answer is that it is the elites of customary law communities who are in control of the development of customary law today. Assuming further that customary law elites are mostly men, the law development consequently bears the signatures of patriarchy.<sup>74</sup>

Bride kidnapping is the construction of the culture produced, reproduced, and disseminated from generation to generation, continually and continuously, resulting in its being accepted as something normal and right. However, legal culture is not static; it develops and changes along with the development of awareness in society. According to Rambu Hada Indah,<sup>75</sup> the law is a dynamic phenomenon that is formed by two social forces, namely regulation and situational adjustment. She describes a crucial characteristic of the legal system as not fully consistent, but as gradually and systematically

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71 Mamuli are precious metal ornaments of the Sumba people, in Sumba, Indonesia. They are found in the megalithic society of the Sumba people. The mamuli ornaments have a shape that represents the female genitalia, symbolizing the woman as the giver of life. Mamuli are the most important Sumbanese precious metal valuables and are seen as heirloom objects which serve a role in important exchange rituals.

72 Hamarato, Interview (Sumba, Indonesia, 2020).

73 Vel, *supra* note 34 at 83.

74 See and compare: Junifer Dame Panjaitan et al, “Forced Marriage in the Bride-Napping Case in Sumba-East Nusa Tenggara Linked with Positive Law in Indonesia” (2022) 22:3 Jurnal Dinamika Hukum 632-646.

75 Sally Falk Moore, *Law as Process: An Anthropological Approach* (Hamburg: Lit, 2000) at 32-82.

planned and created to answer problems through time.

An interesting development to be observed is the change taking place in the worldview of certain circles in society. While in the past the issue of bride kidnapping was hardly noticed, there have been petitions by women activists, theologians, academicians, and certain people demanding the Local Government of Southwest Sumba, West Sumba, Central Sumba, and East Sumba to issue a Regional Government Regulation prohibiting bride kidnapping. The idea of prohibiting bride kidnapping by imposing positive law reflects the sociological jurisprudence paradigm of using law as a tool of social engineering.

Worldviews in society are difficult to change, particularly when they become engrained in the culture. Bringing change in culture requires a cultural approach. It requires knowledge of the legal culture living in society.<sup>76</sup>

The life of customary law communities in Sumba revolves around the collective values of their people which have constructed a certain legal norm. The community follows and adheres to customary (*adat*) law since it is the product of local knowledge and negotiation. Albeit unwritten, *adat* law is more readily complied with than national law. The community abides by *adat* law as part of their everyday life.<sup>77</sup>

Law is not only an affair of rules; it is also an affair of behavior. Human beings may be the same biologically and physiologically; however, there are different social constructions, which have a significant influence on the character and development of legal institutions. It is important, therefore, to understand the character of society before building its legal construct. Human rights are indeed universal; however, they stand on a diverse social basis. In any event, human rights are first and foremost about humans, and only then about law, hence it is paramount to understand society itself.<sup>78</sup>

In general, Indonesian society possesses social capital<sup>79</sup> in the form of the institution and practice of “*musyawarah*” (deliberation for consensus), namely communication among community members enabling them to discuss issues and seek consensus and wise solutions. There are no final conclusions in deliberation, and all issues remain open to deliberative communication.<sup>80</sup> In the context of bride kidnapping, the space for communication remains open among elements of the community such as *adat* leaders, religious leaders, *maramba* (nobility), NGOs, academicians, legislators, and the government. Communication can be effective only if it is done in an egalitarian way, without dominant parties, in which each has the freedom to express and share their

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76 See: Ubendra Baxi, *The Future of Human Rights*, 3d ed (Oxford: Oxford University Press, 2008).

77 Rambu Hada Indah, Interview (Sumba, Indonesia, 2021).

78 See also: Takis Tridimas & Giulia Gentile, “The Essence of Rights: An Unreliable Boundary?” (2019) 20 *German Law Journal* 794-816.

79 Social capital is a collective noun, a concept of investment in relationships or networking for a better individual and communal reform (Fulkerson, & Thompson, 2008, p.544)

80 See also: Katarzyna Jezierska, “With Habermas against Habermas. Deliberation without Consensus” (2019) 15:1 *Journal of Public Deliberation*.



thoughts. It can be discussed, for instance, that while bride kidnapping may have been considered the right thing in the past, in the contemporary context it is no longer relevant, and it is contradictory to human rights.

Any decision to adopt a legal provision prohibiting bride kidnapping should be based on the process of *musyawarah*, a deliberation process involving all stakeholders to make sure that any such legal product changes practices that violate human rights, without disrupting customary law. In other words, the gravity of legal reforms depends on society: how local people will be able to see and make a consensus that the kidnapping of marriage is a human rights violation. The link between law and social change arises when the law is examined in the context of local life. Thus, human rights concepts and approaches can be adapted to local contexts as part of local legal consciousness.<sup>81</sup>

As the Semi-Autonomous Social Field proposes, state law is not the only factor that influences people's decisions, people's actions, and people's relationships. There are other processes involved including the legal and non-legal rules such as competition, inducement, coercion, communication, and collaboration.<sup>82</sup>

Thus, it can be concluded that international law, state law, and customary law are not autonomous. State law is semi-autonomously applied since customary law has been rooted in the heartstrings of its people, which of course if it is forced to be applied, deviations will always be found. Customary law is also semi-autonomously applied since it must adjust to the development of thoughts, human rights values, and state laws that must be obeyed. To perfect this theory, Sally Falk Moore needs to support the description of the semi-autonomous social field with continuous egalitarian communication among the parties since it is not naturally grown and developed.

According to research results from Guidora Julianta Kopon, bride kidnapping is a culture of the Sumba people conducted based on approval from Marapu. Marapu is the name for God believed in by the Sumba People, and Marapu is their original belief.<sup>83</sup> However, along with the development of public awareness of human rights, women's protection policies have emerged from a human rights perspective, especially with the ratification of CEDAW and resolutions on anti-torture and inhumane treatment. Until then, the bride kidnapping practice is slowly becoming problematic and is no longer considered appropriate, even if it should be abandoned because it is degrading to women's dignity.<sup>84</sup>

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81 Anna-Maria Marshall, "Communities and Culture: Enriching Legal Consciousness and Legal Culture" (2006) 31:1 *Law & Social Inquiry* 229-249.

82 Sally Falk Moore, "Law and Social Change: The Semi-Autonomous Social Field as An Appropriate Subject of Study" (1973) *Law and Society Review/Summer* at 719-745.

83 See: Guidora Julianta Kopong, "Kekerasan Berbasis Gender: Telaah Teoritis 'Kawin Tangkap' Dalam Budaya Sumba (NTT)" (2020) 1:2 *Optimisme: Jurnal Bahasa, Sastra, dan Budaya* 23-27.

84 Eva Mazrieva, "Kawin Tangkap' di Sumba, Tradisi atau Kedok Merampas Hak Perempuan?", (2023), online: *VOA Indonesia* <<https://www.voaindonesia.com/a/kawin-tangkap-di-sumba-tradisi-atau-kedok-merampas-hak-perempuan-/7287113.html>>.

#### 4. Permeating Human Rights in the Awareness of Local Communities Through Legal Communication

The practice of bride kidnapping needs to consider the perspective of the children involved, as outlined in the 1989 Convention on the Rights of the Child, specifically in Article 2 Paragraph 2, setting out that State Parties shall take all appropriate measures to ensure that children are protected from all forms of discrimination or punishment based on status, activities, expressed opinions, or parents', legal guardians', or family members' beliefs.

The Convention on the Rights of the Child was adopted by the United Nations General Assembly on November 20, 1989. Shortly thereafter, on January 26, 1990, Indonesia officially became a party to the Convention by signing it.<sup>85</sup> With the ratification of the Convention, thus, the Indonesian government is in the position of an obligation holder who is obliged to fulfill, protect, and respect children's rights legally. This applies to every child in Indonesia. To strengthen this ratification to protect children in Indonesia, Law Number 23 of 2002 concerning Child Protection was passed, which then became a guide and legal umbrella for carrying out every child protection activity.<sup>86</sup>

Customary law also needs to respect the role of the state and its endeavors to protect children, including through Law Number 20 of 2014 on Amendment to Law Number 23 of 2002 on Child Protection. To enhance the effectiveness of monitoring the fulfilment of children's rights, Article 74, Paragraph (2) of the same law allows the establishment of Regional Child Protection Commissions or similar institutions by Regional Governments. In Article 76A sub-article a of the same law, the State affirms the prohibition of treating children discriminatively which would result in harm to the child, both materially and morally, and hinder their social function. Thus, the psychological impact of bride kidnapping on a child is considered a form of moral harm that should not be tolerated under the guise of culture. Meanwhile, to protect the position of women in Indonesia, Law Number 39/1999 on Human Rights, specifically Article 50 states that "Women who have reached adulthood and or have been married have the right to carry out their own legal actions unless otherwise determined by their religious law". However, this article is not strong or independent enough to safeguard women, given that it still allows for exceptions in the event that religious and customary rules dictate differently. Meanwhile, patriarchal norms are frequently firmly ingrained in the principles of religion and customary law. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) places particular emphasis on the protection of women on

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85 Jean Grugel, "Children's rights and children's welfare after the Convention on the Rights of the Child" (2013) 13:1 *Progress in Development Studies* 19-30.

86 Raissa Lestari, "Implementasi Konvensi Internasional Tentang Hak Anak (Convention on The Rights of The Child) di Indonesia (Studi kasus: Pelanggaran Terhadap Hak Anak di Provinsi Kepulauan Riau 2010-2015)" (2017) 4:2 *JOM FISIP* 1-10 at 5.

a global scale, specifically in Article 1 emphasizing that what is meant by discrimination against women includes,<sup>87</sup> “...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights”. This is reinforced by Article 3, that “state parties”, including Indonesia (based on Law Number 7 of 1984), shall take all appropriate measures, including by legislation to ensure the full development and advancement of women, with a view to ensuring the exercise and fulfilment of human rights and fundamental freedoms of women on an equal basis with men. As such, States should further strengthen the protection of children and women by establishing laws that bridge the gap in respect for human rights in customary law.

Yet, adopting and localizing human rights does not happen quickly and is not easily manifested in local awareness. When examined closely, the structure of the communitarian model is built upon specific principles and is grounded in a uniform shared identity. This identity is deeply rooted in the cultural bonds and customs of the community, making it resistant to easy detachment.<sup>88</sup> The ethical justifications underlying bride kidnapping such as strengthening the bond between two families through marriage should not be tainted by unethical actions that violate a person's fundamental rights, especially of a child who is too young to fully comprehend adult matters such as marriage and starting a household. Furthermore, moral values should not be equated with material values such as those summarized by “belis” (dowry). Whilst both may hold values, the quality of these values is clearly different.

Only if there is institutional support should this new perspective be sustained.<sup>89</sup> Any changes in legal culture require a cultural approach, with legal communications among elements of society, for instance, *adat* leaders, religious leaders, *maramba* (nobility), NGOs, academicians, legislators, and the government. People are inclined to comply with specific legal regulations because effective communication ensures that every legal participant comprehends and acknowledges the importance of adhering to human rights and following the law. Communication plays a crucial role in fostering a rational respect for human rights and legal obedience, going beyond mere state coercion. Transforming the prevailing patriarchal mindset necessitates an initial shift in awareness.<sup>90</sup> To reduce or potentially eliminate patriarchal culture, it is essential to promote equal, inclusive, and open communication that fosters deliberative awareness of human rights within the local

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87 Elise Meyer, “Designing Women: The Definition of ‘Woman’ in the Convention on the Elimination of All Forms of Discrimination Against Women” (2016) 16:2 *Chicago Journal of International Law* 553-390.

88 See: Amin Mudzakir, “The Return of Tradition: Alasdair MacIntyre's Communitarian Rationality and Ethics”, *Societas Dei*, Vol. 4, No. 2, 2017, pp. 147-163.

89 Sally Engle Merry, *Human Rights and Gender Violence Translating International into Local Justice* (The University of Chicago Press, 2006) at 181.

90 Cynthia Werner, “Bride Abduction in Post-Soviet Central Asia: Marking a Shift Towards Patriarchy through Local Discourses of Shame and Tradition” (2009) 15:2 *The Journal of the Royal Anthropological Institute* 314-331.

community.

Such ongoing legal communication could broaden society's horizons which would, in turn, lead to changes in worldviews and old patriarchal customs without causing major disruptions in society and critical aspects of living arrangements. A social life that impacts the well-being of the *kabihu*<sup>91</sup> within a *paraingu*<sup>92</sup> is invariably addressed through a traditional gathering known as "Pulu pamba" or "Bata bokulu" (meeting talk, big discussion) in the Sumba language.<sup>93</sup> In this sense, legal pluralism is interpreted as the adaptation of laws when embracing the gradual changes in the community. Such legal communication could serve as an avenue for international law (human rights law), national law, and *adat* (customary) law, to "interact and influence one another" in a gentle manner, thus leading to the creation of a "hybrid law".<sup>94</sup>

#### IV. CONCLUSION

When the viewpoint of sociological jurisprudence and the historical school of jurisprudence are mapped, similarly, both view law and society as inseparable and interconnected. The fundamental difference is the way in which the law functions. The historical school of jurisprudence offers a more romantic and evolutionary concept of law: that it was born and grows naturally as the heritage of local people; while sociological jurisprudence tends to describe the law in a modern way by presupposing it as a tool of social engineering.

The battle of paradigms between sociological jurisprudence and the historical school of jurisprudence is not only in the world of ideas, but also occurs in the empirical realm. The case of bride kidnapping in Sumba is an example where a paradigm dispute can be examined empirically. The paradigms dispute between sociological jurisprudence and the historical school of jurisprudence on bride kidnapping practice can be reconciled by taking the "middle path". Synthesizing these paradigms means legal culture is not static; it develops and gradually changes along with the development of awareness in society. Hence, the gravity of legal reforms does not depend on the legislation, but on the society itself. In such context of bride kidnapping cases, incorporating human rights culturally must be instilled in the local cultural system and be pervasive in the normative values and ways of local thinking through legal communication.<sup>95</sup>

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91 "Kabihu" literally means corner pillar, and the patrilineal clans are the corner stones of Sumbanese society (Hengu Kaka, Interview (Sumba, Indonesia, 2020))

92 "Paraingu" (Indonesian: *kampung*). In the past paraingu were preferably built on top of a hill, and they used plants and stone walls as fences (Rambu Hada Indah, Interview, (Sumba, Indonesia, 2020))

93 *Laporan Penelitian: Dinamika Identitas Budaya Orang Sumba*, Prodi Antropologi FIB Universitas Udayana Denpasar, by Purwadi Soeriadiredja (2016) at 16.

94 Sergio Pignuoli-Ocampo, "Communication as analytical unit in Luhmann and Habermas" (2017) 73 *Convergencia Revista de Ciencias Sociales* 1-25.

95 See: Abdullahi Ahmed An-Na'im, "Introduction" in *Human Rights in Cross-Cultural Perspective* (University of Pennsylvania Press, 1992) at 4.

Legal communication can successfully overcome the weakness of sociological jurisprudence and the historical school of law. Communication is a fundamental logic, the reason why the law must obey its subject. As a result, this communication will lead to obedience to the law since it can be explained logically, not merely based on the state authority. Legal communication can broaden society's horizons: the local people will be able to see that bride kidnapping may have been considered the right thing in the past, but in the contemporary context it is no longer relevant. Through legal communication and ultimately expectations, citizens can come to a consensus that bride kidnapping is a human rights violation. Thus, human rights concepts can be adapted to the local contexts as part of local legal awareness.

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