



ALIGNING ISLAMIC LAW AND CUSTOMARY LAW: LEGAL DIALECTICS IN THE TRADITION OF FORCED MARRIAGE IN JAMBI

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Abstract: This research will discuss the practice of forced marriage tradition by customary sanctions for returning home late at night in the Lekuk 50 Tumpi Lempur Jambi community. This research will also examine the interaction between Islamic law and customary law on the sanctions of the tradition. The research method used is field research. Data is collected by interviewing 16 informants, 7 couples, and two traditional leaders in Lekuk Lima Puluh Tumbi Lempur Jambi. Furthermore, the data that has been obtained is analyzed. So that the research results found that the interaction of Islamic law and customary law in the tradition of forced marriage in the Lekuk 50 Tumbi Lempur community, First, pre-marriage or imposition of sanctions, the nuances of Islamic law and custom go hand in hand. Second, the marriage contract procession is carried out with the Islamic religion, such as pillars and conditions. Third, post-contract, although the nuances of custom can be said to be more, it does not leave the nuances of religion. Theoretically, this research offers insight into the harmonious and complementary relationship between Islamic law and customary law, which is different because the two laws generally intersect. In addition, practically, this research reveals the practice of forced marriage carried out by custom, not from the family, which generally occurs.

Keywords: Custom; Dialectics; Islamic Law; Forced Marriage

Abstrak: Penelitian ini akan membahas praktik tradisi kawin paksa oleh sanksi adat karena pulang larut malam di masyarakat Lekuk 50 Tumpi Lempur Jambi. Penelitian ini juga akan mengkaji interaksi antara hukum Islam dan hukum adat pada sanksi tradisi tersebut.

Metode penelitian yang dipakai adalah penelitian lapangan, pengumpulan data dilakukan dengan melakukan wawancara dengan 16 informan yakni 7 pasangan dan dua tokoh adat di Lekuk Lima Puluh Tumbi Lempur Jambi. Selanjutnya data yang telah diperoleh dianalisis secara mendalam. Dari hasil penelitian ditemukan, bahwa interaksi hukum Islam dan hukum adat dalam tradisi kawin paksa pada masyarakat Lekuk 50 Tumbi Lempur, *Pertama*, pra-perkawinan atau penjatuhan sanksi, nuansa hukum Islam dan adat berjalan beriringan. *Kedua*, Prosesi akad nikah dilaksanakan dengan agama Islam seperti rukun dan syarat. *Ketiga*, Pasca akad, meskipun nuansa adat dapat dikatakan lebih banyak, tetapi tidak meninggalkan nuansa agama. Penelitian ini, secara teoritis menawarkan wawasan terhadap hubungan hukum Islam dan hukum adat yang harmonis dan saling melengkapi, hal ini tentu berbeda, karena pada umumnya antara kedua hukum tersebut saling bersinggungan. Selain itu, secara praktis, penelitian ini mengungkap adanya praktik kawin paksa yang dilaksanakan oleh adat bukan dari pihak keluarga yang umumnya terjadi.

Kata Kunci: Adat; Dialektika; Hukum Islam; Kawin Paksa



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INTRODUCTION

The practice of marriage in the community, there are still marriage practices that are not based on the will of one or both parties but because of pressure or encouragement from a third party based on power.¹ Where generally, coercion is carried out by the family. However, forced marriage here is defined as matchmaking, coercion, and marriage due to customary sanctions.² The phenomenon of forced marriages due to the presence of traditional witnesses still exists in several indigenous peoples in Indonesia, including the Lekuk 50 Tumbi Lempur community, Kerinci Regency, Jambi Province. In 2015-2016, at least seven couples were forced into marriage by custom because they returned late at night.³ Local customs enforce the practice of forced marriage in the Lekuk 50 Tumbi Lempur community. Forced marriage sanctions are imposed on unmarried men and women who are not married couples, where the two travel together and return to the village late at night, so they are forced to marry. The existence of coercion to marry as a sanction of this custom does not consider the reasons for going home at night, the willingness to marry between the two, the age of the couple, and even the

¹ Ghansham Anand dkk., "Forced Marriage as an Unlawful Act in Indonesia: A Comparative Analysis," *Lambung Mangkurat Law Journal* 7, no. 2 (t.t.): 159-74, <https://doi.org/DOI: 10.32801/lamlaj.v7i2.353>.

² Emma Psaila dkk., *Forced marriage from a gender perspective* (European Union: Directorate General For Internal Policies, 2016), 15, <http://www.europarl.europa.eu/studies15>.

³ "Data Kantor KUA Lolo Gedang Kecamatan Pasar Kerman," 2017.

impact that will be caused, as it is known that the impact of forced marriage will have an impact on social, psychological, economic, and health aspects.⁴

Forced marriage is a custom that has been practiced by society for a long time and has been passed down for generations. So, it becomes interesting to examine how this practice of forced marriage is especially true for men and women who go into late at night forced into marriage without considering other reasons and how the impact and review of Islamic law in looking at the customary practice of forced marriage. As for some literary facts, several studies with similar but not the same theme have been carried out.

The research carried out tends to analyze using only three concepts. The first research on forced marriage was carried out due to coercion from parents and the encouragement of economic factors. Nelda and Adam Gunawan conducted this research.⁵ The second, Research raises the change in the tradition of forced marriage in society past and present and the meaning of forced marriage.⁶ And third, the research on forced marriage carried out by custom, in the research of Zulqurnaini, the existence of forced marriage as a sanction for couples who are alone in a quiet place and indicated to be/have committed adultery.

Meanwhile, Adly's research shows that forced marriage is a customary sanction for someone who has committed adultery.⁷ So no research has discussed the tradition of forced marriage, especially in the Lekuk 50 Tumbi Lempur community, the perspective of Islamic and customary law. Although forced marriage is considered irrelevant to the current context and contradicts the conception of marriage in Islam, the context of this research is to see the interaction pattern between customary law and Islamic law.

The interaction pattern between customary law and Islamic law in Indonesia is mainly dominated by conflict debates between the two laws, such as Akh

⁴ Melisa A Rodgers dkk., "Yemen: Nine and ten-year-old girls forced into marriage, fight for divorce," *Off Our Backs* 38, no. 1 (2008): 5-6, <http://dx.doi.org/10.2307/20838904>.

⁵ Adam Gunawan, "Pandangan Hukum Islam Terhadap Praktek Kawin Paksa (Study Kasus Di Desa Labuan Kecamatan Labuan Kabupaten Pandeglang" *Bachelor Thesis*, (UIN Sultan Maulana Hasanudin, Banten, 2019).

⁶ Elsiati Tangu, Elly Esra Kudubun, dan Alvianto W Utomo, "Kawin Tangkap (Studi Sosiologi tentang Makna dan Praktik Kawin Tangkap di Desa Mareda Kalada, Kec. Wewewa Timur, Kab. Sumba Barat Daya," *Equalita: Jurnal Studi Gender dan Anak* 3, no. 1 (2021), <http://dx.doi.org/10.24235/equalita.v3i2.9841>.

⁷ Muhammad Amar Adly, Nurcahaya, dan Muhammad Idris Nasution, "The Role of the Namora Natoras Mandailing Traditional Institutions in Forced Marriage in Affairs Cases," *Jurnal Mahkamah: Kajian Ilmu Hukum dan Hukum Islam* 7, no. 1 (Juni 2022), <https://doi.org/10.25217/jm.v7i1.2298>.

Manhaji,⁸ Yuliatin,⁹ Ayman Shahbana,¹⁰ and Zikri Darussamin.¹¹ Islamic law and customary law are positioned as always hegemonic, mutually defeating, and in conflict with each other. For example, Yuliatin's study positions customary law as a reference in inheritance issues. Likewise, Darussamin positions the two laws as dichotomous. So no research examines the relationship between the two laws in the frame of harmonious and complementary dynamics. This research is interesting to study because it examines the interaction of the two laws that are considered always in conflict and tries to integrate the two laws to get a way out of the tensions that continue to occur.

This research is conducted in Lekuk 50 Tumbi Lempur, Jambi community. Primary data was obtained by conducting direct interviews with 16 informants of seven forcibly married couples and two local traditional leaders, and secondary data was obtained from related literature. The data was then analyzed using the interpretation method to obtain a conclusion.

THE PROCESS OF IMPOSING CUSTOMARY SANCTIONS FOR FORCED MARRIAGE

The indigenous people of Lekuk 50 Tumbi Lempur are spread in several areas, namely Lempur Tengah, Lempur Hilir, Lempur Mudik, Manjuntol Lempur, and Desa Baru Lempur.¹² The region's people still maintain the custom and pass it on.¹³ The indigenous people of Lekuk 50 Tumbi Lempur in marriage still enforce the custom of forced marriage.

What is meant by forced marriage in the tradition of the Lekuk 50 Tumbi Lempur community is the imposition of customary sanctions on men and women who do not have marital ties, then both travel by leaving the village area and returning to the condition that it is late at night or even do not go home overnight

⁸ Akh Minhaji, *Islamic Law and Local Tradition; A Socio-Historical Approach* (Yogyakarta: Kurnia Kalam Semesta Press, 2008).

⁹ Yuliatin, *Hukum Islam dan Hukum Adat: Studi Pengembangan harta Waris Masyarakat Seberang Kota Jambi* (Yogyakarta: Postgraduate Program UIN Sunan Kalijaga, 2014).

¹⁰ Ayman Shabana, *Custom in Islamic Law, and Legal Theory; The Development of the Concepts of 'Urf and 'Ādah in The Islamic Legal Tradition* (New York: Palgrave Macmillan, 2010).

¹¹ Zikri Darussamin, *Interaksi Hukum Islam dan Hukum Adat: Studi Pelaksanaan Kewarisan Masyarakat Melayu di Daerah Siak* (Postgraduate Program UIN Sunan Kalijaga, 2003).

¹² Irvan Toni dan Yulia, "Perkembangan Desa Wisata Lekuk Lima Puluh Tumbi Lempur Kabupaten Kerinci (2015-2020)," *Galanggang Sejarah* 3, no. 4 (Oktober 2021): 98, <https://ejournal.pamaaksara.org/index.php/gs/article/view/288>.

¹³ Yolla Ramadani dan Astrid Qommaneeci, "Tradisi Wisuda Secara Adat di Masyarakat Lekuk Lima Puluh Tumbi Lempur Kabupaten Kerinci," *Jurnal Antropologi: Isu-Isu Sosial Budaya* 22, no. 1 (Juni 2020): 30, <https://doi.org/10.25077/jantro.v22.n1.p29-37.2020>.

so that both get customary sanctions in the form of forcing the two to get married. According to Kahar Amaris, as *Depati Agung* (traditional figure) explained that forced marriage was carried out because it violated religious rules and customary rules: "When people break the rules of religion and custom, men and women who are not mahrams commit immorality, and when they travel together and return past 8 p.m. or after the evening prayer, they will be forcibly married by custom."¹⁴

The customary sanction of forced marriage has been in place for a long time, namely since the 1950s. Not without reason, the existence of this custom is enforced to protect indigenous people from going out at night to prevent people from committing acts prohibited by religion.¹⁵

The forced marriage occurs when a man and a woman who are both unmarried and then travel and then return to the village and pass 08:00 p.m. and are seen by the residents, and then the residents flock to the woman's house. One of the residents tells *Depati, Ninik Mamak, Alim Ulama*, and *Clever* to come to the woman's house to consult with the families of the two parties, known to have gone home at night. In this traditional deliberation, at least it was attended by *Depati Agung, Ninik Mamak, Alim Ulama*, and *Cerdik Pandai*, the people present, the couple who were caught going home at night, and the families of the two couples.¹⁶

At this customary deliberation, only *Depati* and *Ninik Mamak* have the right to give decisions to both parties. At the same time, *Alim Ulama* only advises couples that the deeds that both have done are wrong according to religion and custom. After the customary deliberations are completed, *Depati* will provide two options; First, *Depati* gave one week to the sanctioned family to marry off their two children. Second, suppose in one week the two children are not married. In that case, they are considered to have resisted and rejected the custom, so both the children and the two families will get customary sanctions, namely being banished or expelled from the indigenous people. They will be included in every customary event and matters related to custom.

¹⁴ Kahar Amris, *Interviews* with traditional leaders, 13 November 2017.

¹⁵ Ibrahim Liman, *interviews* with traditional leaders, 12 September 2017.

¹⁶ Liman.

Table 1. Couples who have undergone forced marriage and their reasons.

No.	Couple	Date of Marriage	Reason
1.	M (M) 18 years old R (F) 15 years old	February 5, 2015	Traveling together to a distant place so that by the time you return home, it is 10:30 p.m. ¹⁷
2.	G (M) N (F)	March 3, 2015	Both were widows and widowers. Both traveled from the hospital and returned home at 21:00 because it was raining, then both were married off without asking for an explanation. ¹⁸
3.	N (M) 22 years old L (F) 19 years old	April 23, 2015	Forced to marry because the two did not return home at night and returned at 06:00 in the morning, with the excuse of accompanying and escorting a friend to elope to Bangko, the two were still married. ¹⁹
4.	C (M) W (F)	December 13, 2015	They were forced to get married because both returned home at 10 p.m. after going to their friend's wedding in Meragin, but on the way home, the motorcycle tire punctured, and the tire patch shop was far away, so they were late returning home. ²⁰
5.	S (M) E (F)	July 9, 2016	The reason for returning home from a reunion with her school friends in Sanggaran Agung but returning home only with her male friend, and arriving home already at 11.00 p.m., because the reunion event finished at 10.00 p.m. ²¹
6.	B (M) E (F)	October 27, 2016	He returned home late at night because the road had collapsed when he returned from Sungai Penuh, so he arrived home at 10:00 p.m. ²²
7.	K (M) H (F)	September 28, 2016	H (F) chose to be forcibly married because her parents had arranged a marriage with another man, so the two chose to leave and return in the middle of the night to be married.

Based on the explanation of the 7 (Seven) couples who are forcibly married, most of the couples go home at night for some reasonable and apparent reasons. However, both are still married, and looking at the aspects of age, the coercion of marriage does not pay attention to the couple's age, and marriage is not based on mutual love and liking.

¹⁷ R, *Interviews* with perpetrators of forced marriages, 5 November 2017.

¹⁸ G, *Interviews* with perpetrators of forced marriages, 9 November 2017.

¹⁹ N, *Interviews* with perpetrators of forced marriages, 5 November 2017.

²⁰ W, *Interviews* with perpetrators of forced marriages, 5 November 2017.

²¹ E, *Interviews* with perpetrators of forced marriages, 7 November 2017.

²² B, *Interviews* with perpetrators of forced marriages, 9 November 2017.

FACTORS AND IMPACTS OF THE FORCED MARRIAGE TRADITION

The result of the interaction between Islamic law and customary law is indeed an exciting thing. This happened to the tradition of forced marriage in the Lekuk 50 Tumpi Lempur community, Jambi. There are several factors underlying the forced marriage custom. The following factors: *First*, the Religious Factor, when men and women are together at night, it is not impossible if both can do deeds prohibited by religion. The custom of forced marriage becomes a socio-religious control to avoid adultery. So, the custom of forced marriage becomes a means of protecting the essence of religious values.²³ *Second*, Social Factors, this factor constructs the goal of maintaining the family's honor, especially girls. Thus, parents forbid their children to leave the house if they return home or leave the house late at night, especially with someone who is not their mahram. *Third*, the customary factor aims to protect the existence of the custom itself. Customs are known as rules that must be carried out as social control in regulating their indigenous peoples.²⁴ This shows that Islamic law, at a practical level, can be influenced by the sociological factors of a developing society.²⁵

Implementing the custom of forced marriage is seen from positive and negative aspects. The positive aspects of the implementation of customs, namely aiming for the benefit, maintaining religion, maintaining honor, and maintaining the existence of customs. However, the negative impacts of forced marriage are also diverse. Where will it impact social, economic, and psychological aspects?²⁶

Coercion between men and women to marry who do not like each other will undoubtedly hurt their home life and can even lead to divorce.²⁷ This is like what happens in four pairs, namely M (male) and R (female), N (male) and L (female), S (male) and E (female), and B (male) and E (female). Meanwhile, a more significant impact occurred on the couple M (male) and R (female) because this couple was still underage, namely 18 years old and 15 years old, and both were still in school. Thus, forced marriages can cause psychological and mental problems and even lead to

²³ Novi Rizka Amalia, "Penerapan Konsep Maqashid Syariah Untuk Realisasi Identitas Politik Islam Di Indonesia," *Dauliyah* 2, no. 1 (2017): 42, <http://dx.doi.org/10.21111/dauliyah.v2i1.806>.

²⁴ I Wayan Bayu Suta, I Nyoman Putu Budiarta, dan I Ketut Sukadana, "Keabsahan Perkawinan Ngerorod (Kawin Lari) di desa Kelusa, Kabupaten Gianyar," *Jurnal Interpretasi Hukum* 2, no. 1 (2021): 7, <https://doi.org/10.22225/juinhum.2.1.3099.184-188>.

²⁵ Minhaji, *Islamic Law and Local Tradition; A Socio-Historical Approach*.

²⁶ Rodgers dkk., "Yemen: Nine and ten-year-old girls forced into marriage, fight for divorce," 5-6.

²⁷ Hammouche Abdelhafid, "Mariage Romantique, Mariage Planifié, Mariage Forcé: Un Enjeu Intergénérationnel En Situation Migratoire," *Dialogue* 1 (2010): 47-58, <https://doi.org/10.3917/dia.187.0047>.

suicide attempts²⁸ and other problems caused by child pregnancy which will be at high risk.²⁹

Marriage is sacred in Islam, so it is termed a strong bond (*mitsaqan ghalidza*). Islam, therefore, gives men and women the right to choose a partner and plan their home life. Marriage is a long bond, and there must be a sense of willingness, not coercion.³⁰ However, it cannot be denied that the existence of this tradition of forced marriage has a strong historical connection with the Islamic religion because the primary and initial reason for the existence of this tradition is the prohibition between men and women who are not legal partners to go together, especially at night, to avoid acts prohibited by religion. So forced marriages in the community are inversely proportional to the custom of forced marriages. As Antoie explained, forced marriages are carried out because they are subject to family orders.³¹

THE INTERACTION OF ISLAMIC LAW AND CUSTOMARY LAW IN THE FORCED MARRIAGE TRADITION

The development of Islamic law continues to develop, and these developments cannot be separated from the traditions carried out for a long time in society. Jurists at every periodization of the implementation of Islamic law still consider the existence of local customs as a legal consideration. As Kamsi argues, Islamic law at this stage is the beginning of a difference (*ikhtilaf*) between Islamic jurists.³² The interaction between Islamic law and customary law gives rise to differences in meaning, resulting in the absence of a smooth dialogue process between these laws.³³ In this regard, Ratno Lukito explained that the interaction of Islamic law and Customs can be built with a dialogical and harmonious relationship. Because customary law is open, other laws can enter or exchange laws. This is a necessity considering that the ability of customary law to adapt to other legal traditions is very

²⁸ Edwige, "Mariage Forcé, Violence Physique, Violence Morale..., Une Réflexion À Partir De Jugements De Nullité De Mariage."

²⁹ Senem Ertan dan Fatma Yol, "Forced Marriage," in *The Palgrave Encyclopedia of Global Security Studies*, ed. oleh Scott Romaniuk, Manish Thapa, dan Péter Marton (Cham: Springer International Publishing, 2019), 6, https://doi.org/10.1007/978-3-319-74336-3_211-1.

³⁰ Akhter dan Munir, "Forced Marriage in Pakistan (From Islamic Perspective)," 41.

³¹ Edwige, "Mariage Forcé, Violence Physique, Violence Morale..., Une Réflexion À Partir De Jugements De Nullité De Mariage."

³² Kamsi, "Pergumulan Politik Hukum Perkawinan Islam Dan Adat di Indonesia," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 46, no. 1 (Juli 2012): 352, <https://doi.org/10.14421/asy-syir'ah.2012.%x>;

³³ Nur Yasin, *Hukum Perkawinan Islam Sasak* (Malang: UIN Malang Press, 2008), 176.

open. This can be seen in the early history of the arrival of Islam in the archipelago, where the two are interconnected and perfect each other.³⁴

The practice of forced marriage is carried out due to sanctions for couples who violate customary rules, so the tradition carried out by the Lekuk 50 Tumpi Lempur Community is a form of interaction between Islamic law and customary law. The meaning of marriage in couples who return late at night has undoubtedly caused multiple interpretations from various circles. On the other hand, it is normal for forced marriage to be regular because part of the customary rules has long been passed down and are social controls in the customary community so as not to travel at night with someone who is not their partner. But on the other hand, there are opposing views, even to the point of claiming that with accusations of a priori and tendentious nature that want to remove the custom from the traditions of the community, this party often thinks that forced marriage is prohibited in Islam, so the customer must be eliminated. They assumed marriage is carried out based on willingness, not forced. Harmony and permanence will not be achieved if one of the prospective spouses' willingness is absent.³⁵

If you look further, the tradition of forced marriage in the 50 Tumbi Lempur curve community has a point of intersection with Islam. Ayman Shabana explained that customary law and Islamic law are hegemonic in society.³⁶ This tradition is one of the efforts made by traditional leaders to protect their indigenous peoples from falling into acts prohibited by religion. The first time this custom was imposed was none other because there was an event where men and women were not their partners passing through Lingkat Lake at night. Tigers pounced on both, and it was suspected that both had committed adultery, so the *Depati Agung* (traditional figures) forbade men and women to go out at night. In addition, the enactment of this custom is based on preserving the honor of the family (*hifd nasl*).

In Islamic literature, the term forced marriage is explicitly unknown. However, forced marriage is often termed *ijbar*, which is an act that is entrusted with responsibility.³⁷ The forced marriage in the Lekuk 50 Tumbi Lempur community is interpreted as a sanction from custom, where the sanctions are in the form of forced

³⁴ Ratno Lukito, *Tradisi Hukum Indonesia* (Cianjur: IMR Press, 2012), 62–63.

³⁵ Al-Hafiz bin Hajar Al-Asqalani, *Bulughul Maram* (Semarang: Toha Putra, 2014), 244.

³⁶ Shabana, *Custom in Islamic Law, and Legal Theory; The Development of 'Urf and 'Ādah in The Islamic Legal Tradition*.

³⁷ Husein Muhammad, *Fiqh Perempuan: Refleksi Kiai atas Wacana Agama dan Gender* (Yogyakarta: LKIS, 2001), 79.

marriage or *ikrah*. *Ikrah*, according to *fuqaha*, is defined as the cause of the invalidity of a marriage.

This tradition of forced marriage has been going on for a long time and is passed down in decline. In Islam, traditions that are carried out for generations and inherited are called *urf*. *Urf* is an act done and acceptable to common sense. So, *urf* can be understood by classifying into three, namely; a. the existence of behavior that solidifies the soul, b. accepted by common sense and c. accepted by human disposition, whereas custom is done repeatedly but has nothing to do with rational and unacceptable reason.³⁸ Therefore, this tradition of forced marriage is *urf* because it can be accepted with reason and carried out repeatedly. Some norms and ethics must be followed, not do things contrary to sharia.

The series of forced marriage processes continued to be carried out religiously and statewide. The role of traditional figures in the marriage contract process is quite central, starting from the first process of sanctions imposing and being a witness during the marriage contract. Meanwhile, the process is statewide to remain obedient to the applicable laws and regulations. However, suppose there is a case where one of the parties is not old enough (under 19 years old). In that case, the marriage is carried out religiously before the guardian, family, and traditional leaders. So, in this case, the interaction between Islamic law and customary law is complementary, as Ratno Lukito explains that the interaction between Islamic and customary law can be built with a dialogical and harmonious relationship. Because, in essence, customary law is an open law, allowing other laws to enter or exchange laws.³⁹

INTEGRATION OF ISLAMIC LAW AND CUSTOMARY LAW IN THE FORCED MARRIAGE TRADITION

Islamic law as an entity and customary law as another entity will continue to dialogue and interact during life and the differences in social reality that continue to develop.⁴⁰ The relationship between Islamic law and customary law Furthermore, several views can be seen in observing the discourse on the relationship between Islamic law and customary law, especially in forced marriage. So that the results of

³⁸ Sucipto, "Urf Sebagai Metode Dan Sumber Penemuan Hukum Islam," *ASAS* 7, no. 1 (2015): 27, <https://doi.org/10.24042/asas.v7i1.1376>.

³⁹ Ratno Lukito, *Islamic Law and Adat Encounter: The Experience of Indonesia* (Jakarta: Logos, 2001).

⁴⁰ Muhammad Iqbal Juliansyahzen, "Dialektika Hukum Islam dan Hukum Adat Pada Perkawinan Lelarian di Lampung Timur," *Al-Aḥwāl* 12, no. 1 (2019): 11, <http://dx.doi.org/10.14421/ahwal.2019.12101>.

the interaction of Islamic law and customary law in the tradition of forced marriage in the Lekuk 50 Tumbi Lempur community are obtained as follows.

*First, in the pre-marital process or the imposition of sanctions, the nuances of Islamic law and custom go hand in hand. The involvement of customary law through the Depati Agung provides a rule that men and women who go out of the house at night will be married to preserve honor and avoid adultery. Islam and custom become inseparable in this case because of the existence of customary law due to the existence of Islamic law. The nuances of custom begin after a week of customary overthrow. Where the perpetrator is given two choices, namely, to marry or not to choose to marry. The consequences are excluded from the customary community if he chooses not to marry. However, traditional teachings synergize and synthesize with the teachings of the Islamic religion, such as the prevention of committing adultery and deliberation of consensus to determine a decision. Second, the procession of marriage contracts, Islamic law is very influential where the marriage contract is carried out with the Islamic religion such as pillars and conditions if there are obstacles from the guardian can be represented to the guardian of the judge (a religious figure or officer of the KUA). Third, Post-contract, although the nuances of custom can be said to be more, it does not leave religious nuances. After the contract procession, the community usually holds a marriage recitation/sermon that guides the values of building an Islamic-based family. It is common for khatib/preacher to convey quotations of holy verses of the Quran and Hadith as the norm in building a family of *sakinah, mawadah, and rahmah*.*

Although the results of the interaction of Islamic law and customary law in the tradition of forced marriage above have been passed and show a harmonious dialogical process, the following process needs to involve interactions considering aspects of benefit. To realize this, it is necessary to go through the stages of legal integration. The integration process can be carried out by considering aspects of benefit aspects with the following notes; first, the sanctioning of forced marriage needs to be carefully considered by considering the motivation and reasons for returning home late at night. Second, prioritizing the value of the benefits of marriage over *mafsadah*, forced marriage, on the other hand, can bring benefits, namely to avoid adultery. Still, on the other hand, it can also bring *mafsadah*. If this condition is the case, rejecting *mafsadah* is preferred. So that the custom of forced marriage can be accepted by the community and even by religion, as Alan Waston

argues. On the other hand, Islam can accept customary law, but there is also a side that Islam cannot accept.⁴¹

Therefore, people believe that although customary law is not religious, it still comes from the same source as religious law, namely God. Thus, the two laws will not conflict. Quite the contrary that the two legal systems need and complement each other. Even religious law is considered a more profane complement to customary law. For the people of Lekuk 50 Tumpi Lempur, the tradition of forced marriage is perfection and control of the community. Therefore, they say that religion is essentially in harmony with custom. These two legal traditions try to find common ground by minimizing intersections or differences. Not stopping at that stage, the two are trying to find similarities to complement each other to realize a harmonious family order.

CONCLUSION

The practice of forced marriage due to customary sanctions in the Lekuk 50 Tumpi Lempur Community is a form of interaction between Islamic and customary law. This tradition intersects with Islam, where the reason for enforcing customs is to protect the community from doing things prohibited by religion. The interaction of Islamic and customary law in the tradition of forced marriage can be seen in the pre-marriage process or the imposition of sanctions. The nuances of Islamic law and custom go hand in hand because it is to maintain honor and avoid adultery. The marriage contract procession is carried out based on Islamic shari'a. Also, after the contract, although there are more customary nuances, there are still religious nuances. The forced marriage tradition above shows a dialogical and harmonious relationship between Islamic law and custom. The two legal systems work together to form a harmonious social order. However, rejecting mafsadah takes precedence over receiving benefits. Otherwise, forced marriage will impact social, economic, and psychological aspects. Forced marriage can lead to divorce and other problems caused by child pregnancy, which will be a high risk.

⁴¹ Alan Watson, *Legal Transplants an Approach to Comparative Law* (London: The University of Georgia Press, 1993).

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