

Tradition of the forced
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1 Tradition of the forced marriage of couples who return late at night perspective of Islamic law: Case study of the tradition of the Lekuk Lima Puluh Tumbi Lempur Society, Jambi

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Abstract: Islam upholds the principle of willing consent in marriage, prohibiting coercion, yet in the Lekuk Lima Puluh Tumbi Lempur Jambi community, forced marriages occur due to local customs, leading to negative consequences. The research method used was field research focusing on the Lekuk Lima Puluh Tumbi Lempur community, Jambi, Indonesia. The data obtained were analyzed and studied with Islamic law. The findings first show that the forced marriage occurs when a man and a woman return to the village after a late night. Second, factors behind these customary sanctions include religious, social and customary ones. Third, the impact of these customary sanctions is the occurrence of underage marriage and the resultant divorce. Fourthly, the marriage is contrary to Islamic law, because it involves coercion, even though the pillars of marriage are fulfilled, but the conditions of marriage are not fulfilled, so the law of marriage becomes fasid (broken). Therefore, as a consideration, if the sanction of forced marriage is carried out without regard to the cause, whether chronological or consensual, and age, but only based on customary coercion, then the customary sanction can cause more significant harm than benefit, so the custom must be abandoned.

Keywords: forced marriage; willingness; Islamic law

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A. Introduction

Marriage has an essential meaning in human life, as it not only fulfills sexual satisfaction but also as it provides worship value. It is also a means to regenerate based on love between spouses, families, tribes, and nations. Marriage can also be a bond of agreement between a man and a woman who decide to spend their lives together and have fulfilled both according to *syara'* and the state. In practice, marriage is a social contract that involves an agreement for both partners to live together as husband and wife (Ali & Murdiana, 2020).

Marriage is also considered sacred, as it comprises many considerations, such as mental, spiritual preparation and belief in choosing a partner. In the choice of life partners, Islam provides equal rights between men and women. It has never given legitimacy in the form of power to anyone, including parents, to force their children to marry, emphasizing parents' role as advisors for their children regarding marriage (Fahri, 2020).

The principle of marriage in Islam is based on the worship to Allah. Islam provides a principle in marriage, namely the willingness and consent of the parties, as a condition for a marriage; coercion (*ikrāh*) is not allowed (Amin & Muhdi, 2020). As explained by Sheikh Wahbah al-Zuhaili, marriage does not become valid between two prospective partners without being based on the willingness of both. If one of them is forced to marry by *ikrāh*, with threats such as beating, criticism, imprisonment or even murder, then the marriage *adad* is damaged (*fasad*) (Sa'dan, 2016). Consequently, the willingness and agreement between a man and a woman who intend to marry is an important requirement before the marriage contract is undertaken.

3 Willingness and the lack of coercion in marriage differs from what takes place in the Lekuk Lima Puluh Tumbi Lempur Jambi community, where marriage results from the coercion of local customs. This coercion is experienced by unmarried men and women, who go out together and return to their village late at night, where they will be forced to marry. If the couple is late returning to the village, they are required by custom to marry. This sanction is imposed without considering why they returned home at night; their mutual willingness; or their age, which has a subsequent impact on couples forced to marry, such as domestic disharmony or even divorce.

Forced marriage is a local custom involving capturing and marriage, with several reasons forcing them to so, which are of course detrimental to the religion and the environment. This tradition is performed amid a religious community and conforms

to government rules. It is important that the practice is explored, taking into account the views of the government as the policyholder. The motives behind forced marriage need to be clarified through field studies that uncover the reasons behind the tradition and that establish how religions views this long-practiced tradition.

For the study, several related studies have been reviewed, such as the research of Doko, which discusses the Kaein capture tradition in Sumba (Doko et al., 2021). In addition, Ramdani discusses the graduation tradition in Lekuk Lima Puluh Tumbi Lempur society (Ramadani & Qommanecici, 2020) and Zulqurnaini discusses the Islamic view of forced marriage in titumbukne (Zulqurnaini, 2019). Some of these studies discuss the same theme namely forced marriage, but the location and customs observed are different. The focus of this paper is to observe the extent to which the forced marriage process takes place and how Islam views the sanction of forced marriage on the people of Lekuk Lima Puluh Tumbi Lempur Jambi.

B. Method

The study uses a qualitative-descriptive method based on field research, with data collected through observation, interviews and documentation in the Lekuk Lima Puluh Tumbi Lempur community. The data were from both primary and secondary sources. The primary data were obtained by conducting direct interviews with informants, namely the people of Lekuk Lima Puluh Tumbi Lempur, while secondary data were obtained from related literature, such as books and journals. The paper aims to describe and draw conclusions from the review of Islamic law on forced marriage customs in the Lekuk Lima Puluh Tumbi Lempur community.

C. Result and Discussion

Overview of the Customs of Forced Marriage in the Tradition of the Lekuk Lima Puluh Tumbi Lempur Community

The implementation of marriage customs in Indonesia generally has the same characteristics, namely based on customary rules and sanctions, this is similar to the tradition in the Lekuk Lima Puluh Tumbi Lempur community. Lekuk Lima Puluh Tumbi Lempur is an area located in Gunung Raya, Kerinci district, Jambi, Indonesia (Ali & Puspita, 2022). It comprises several customarry areas, namely Middle Lempur, Lower Lempur, Mudik Lempur, Majinto Lempur and Baru Lempur Village (Toni, 2021). The indigenous peoples in the region continue to maintain their traditions and customs to this day (Ramadani & Qommanecici, 2020). One of these is the custom of forced marriage.

The term 'forced marriage' consists of two words, marriage and forced, with marriage meaning that a man and woman change their status and become husband and wife (Saputri, 2020). The word 'forced' refers to a pressing or , urgent action that must be obeyed without any element of choice (Mufidah Ch, 2006). In light of this definition, forced marriage means the marriage between a man and a woman which takes place on the basis of coercion or pressure by other parties and not of their own volition. Forced marriages can also be interpreted as marriages which take place after certain events, such as the arrest of an unmarried male and his female partner, without a marriage bond, where they are alone in a quiet place, indicating that they have had a relationship that is prohibited by religion. Forced marriage is essentially an attempt to avoid acts prohibited by religion such as adultery. (Amin & Muhdi, 2020).

Regarding sanctions for unmarried men and women, if they leave their own village and do not return until nightfall, both are sanctioned and forced to marry by traditional leaders, because they are suspected of having sex outside of marriage.

This was explained by Mr. Kahar, a Deputy Agung (customary leader), who stated that in general people understand and follows the rules of marriage law, but in certain conditions there are times when such rules cannot be implemented. This may happen when there is a customary sanction for forced marriage, which occurs when there is a violation of religious and customary rules, namely when men and women commit acts of immoral acts or return home late at night. If this takes place, the two will be married directly because according to the prevailing custom, men and women are prohibited from traveling late at night because this will have a bad impact on the perpetrator and their families (Kahar, interview).

The practice of forced marriage has existed for a long time, as explained by Mr. Liman, a *Depati Muncak*, who stated that this custom has been observed since the 1950s, following an incident when a man and an unmarried woman committed an illicit act and were attacked by a tiger on their way home. Consequently, the traditional leaders and community gathered at the traditional house to discuss the incident, resulting in a decision to agree on a customary rule, namely forced marriages for couples who return after 20:00, with the aim of preventing people from performing acts that are prohibited by religion like adultery (Liman, interview).

Therefore, the process of forced marriage involves a man and a woman who return past a specified time and are seen by local residents, who will then converge on the woman's house. One of the residents will then call the *Depati*, *Ninik Mamak*, *Alim Ulama* and *Cerdik Pandai* to talk with the couple who were caught coming home late and the families of both parties. According to Mr. Kahar's explanation, this

meeting is attended by traditional leaders, the Depati Agung, Ninik Mamak, Alim Ulama, Cerdik Pandai, the people present, the couple in question and their families. In this deliberation, only the Depati and Ninik Mamak play a role in making decisions, while the Alim Ulama only acts as a guide to the couple in terms of what is right and wrong according to the religion and customary rules, while the Clever Pandai only serves as the Depati's assistant in finding a solution. When the Depati pronounces that the man and woman must marry, then the matter is final (Kahar, interview).

After the deliberation is complete, the Depati will give options to the family to be able to perform the marriage in one week's time. If within the specified time period they do not hold the wedding reception, then the couple is considered to have refused, and their families received customary sanctions, namely exile or expulsion from the indigenous community. They will no longer be allowed to be involved in any traditional events or matters related to customs.

Analysis of the Related Factors and Impacts of Implementing Forced Marriage Customs on the Tradition of the Lekuk Lima Puluh Tumbi Lempur Community

The enforcement of forced marriage customs in the Lekuk Lima Puluh Tumbi Lempur community is certainly not only valid, but there are several factors that underlie the application of the custom. Regarding these factors, in his interview Harditon as *Depati Anom* explained that a man and a woman were traveling from a lake late at night on foot, when the woman was attacked by a tiger because, they are suspected of committing acts prohibited by religion, therefore the community and the Deputy Agung imposed a rule that forbade men and women who were not married to go out and return home late at night. It was feared that both would commit adultery, which is an act that is prohibited by religion; as almost 100% of the indigenous people of Lekuk Lima Puluh Tumbi Lempur are Muslim, this would not only have a bad impact on the couple, but also on their families and customs, and the family name would be tarnished in the community because of the actions of the children. If this happens to a girl, it is likened to a glass, which, when broken cannot be repaired (Harditon, interview).

From the interview findings, it is concluded that there are three factors that cause forced marriages in the Lekuk Lima Puluh Tumbi Lempur community, as detailed below.

First, the religious factor. Forced marriage was enforced because of the incident of an unmarried man and woman who were returning home on foot from Lake Lingat

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at night. During their walk, both were attacked by a tiger. From the time of the incident until now, people have thought that they were doing things prohibited by religion, as explained by Mr. Muher, *Depati Parbo Singo*, who stated that if men and women are together at night, it is possible they had done something wrong forbidden by religion. It is also possible that when they were alone there was a third party, namely the devil, who incited them to commit acts forbidden by religion. In addition, when returning home late at night and passing through the middle of the forest, is dangerous because it can be pounced on by wild animals (Muher, interview).

Based on the interview above, it is clear that the community thinks that if men and women who are not married commit acts prohibited by religion, they will automatically be punished by God, as in this incident when they were attacked by a tiger. This is a form of religious social control in the Lekuk Lima Puluh Tumbi Lempur community through forced marriages as a community effort to prevent adultery, which is prohibited by religion. Even if the primary control is on the individual, if there is no self-control this will lead to bad behavior forbidden by religion. The enforcement of customary sanctions of forced marriages is seen as a means of religious protection, which is the goal of Islamic law, namely by maintaining all human behavior by not criticizing, playing games with, belittling or humiliating religion (Amalia, 2017). Maintaining the good name of religion is one reason for imposing forced marriage customs.

Second, social factors, which are based on the social construction of society, the purpose of maintaining the honor of the family, and the honor of girls, which are factors that underlie the implementation of customs. Families' expectations of their children are very high, because the children represent the honor of the family itself, so when forced marriage takes place, it is not only the name of the child that is tarnished in society, but also that of the family. Therefore, parents prohibit their children from going out late at night, let alone the absence of material ties..

Third, the *adat* factor, which is more aimed at protecting customs in the form of rules which are intended to impose social control in the regulation of the indigenous peoples (Suta et al., 2021). The forced marriage custom is a type of social control for the people of Lekuk Lima Puluh, aimed at preventing them from committing acts prohibited by religion by enforcing the rule not allowing men and women to go out late at night. The positive impact of forced marriages on *adat* is to maintain and implement the social control function of the indigenous peoples themselves.

These three factors illustrate that the purpose of enforcing forced marriages is not merely a formality, but rather in the service of religion, society and customs themselves. However, with regard to such enforcement, it is also necessary to

consider both the positive and negative impacts. In positive terms, the implementation of the custom is intended to provide benefits by maintaining religion, family honor and customs. However, the negative impact of forced marriage also needs to be studied, especially in relation to the community and the perpetrators who conduct the forced marriage, as explained below.

Impact on the Perpetrators of Forced Marriage

Forced marriage has various impacts, from household disharmony to divorce, as experienced by couple M (male) and R (female), both of whom were victims of forced marriage, both friends, and who were travelling to Kayu Aro. Because of the distance they returned at 22:30, so they were forced to get married even though they were just friends and at the time M was 18 years old and in 2nd grade of high school, while R was 15 years old and still in 3rd grade of junior high school. Because of this, they were divorced after only 9 months of marriage (R, interview).

The same was experienced by couple N (male) and L (female), who married in 2015, after they had been going to meet a married friend, but returned at 6 am, so faced a forced marriage, even though they did not like each other. The impact of their marital relationship ended in divorce (N, interview).

Based on this incident, it is concluded that couples who marry through coercion rather than consensually, and who are relatively young and immature, face a disrupted domestic life. This is because in essence a forced relationship is difficult to accept. Most couples feel unable to continue a relationship if it is not based on love and associated with a negative view from society, with people assuming that the couple forced to marry have committed an act that is prohibited by religion, namely adultery. In reality, this may not be the case, so the couple will feel marginalized and ostracized by those around them.

Impact on Society

Forced marriage also has an impact on the community, namely the many parents who forbid their children from going out of the village until late at night. As explained by Endang's, the existence of the forced marriage rule makes the mother no longer protective of her children, especially girls. She emphasized to her daughter not to go out to play at night and even required her daughter to come home before the *Maghrib* call to prayer (Endang, interview).

Another impact is the great concern of parents if their children go out of the house, requiring them not to come home late because the community also feels concerned about couples who are subject to customary sanctions. In general, the

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imposition of sanctions will have a negative impact on families who receive them; for example, the good name of the family will be tarnished and they may receive customary fines or even expulsion from participation in the customs (Zulqurnaini, 2019). However, a positive impact of this customary rule is the increasing seriousness of the family in taking care of their children. In this way, the people of Lekuk Fifty Tumbi Lempur feel safe and secure because they no longer hear bad news caused by the customary sanctions of forced marriage.

An Overview of Islamic Law Related to the Custom of Forced Marriage in the Tradition of the Lekuk Fifty Tumbi Lempur Society

The purpose of marriage in Islam refers to God's commandment to create legal offspring in a peaceful and orderly household bond. In addition to this, it relates to upholding religion, preventing immorality, and fostering an orderly family (Zulqurnaini, 2019). In this way, the role and function of the family can be achieved, namely in relation to education, and the functions of sexual regulation, socialization, affection and protection (Ali & Murdiana, 2020).

Marriage by force is an act that is prohibited by religion, as stated in the hadith of the Prophet Muhammad:

عن أبي هريرة رضي الله عنه أن رسول الله صلى الله عليه وسلم قال : لا تنكح الأيم حتى تستأمر , ولا تنكح البكر حتى تستأذن , قالوا: يا رسول الله وكيف إذن؟ قال أن تسك (رواه البخاري)

"From Abu Hurairah ra. That the Messenger of Allah (SAW) said: it is not permissible to marry a widow before discussing it with her and not to marry a girl (virgin) before asking her permission." They asked, "O Messenger of Allah, how do you know the permission?" He replied, "with him silent" (Narrated by Bukhari) (Albani, 2007).

The hadith explains that before marriage, a woman must first be asked if she is willing, because the act of marriage is an eternal relationship between husband and wife; harmony and eternity will not be realized if the willingness of the prospective wife is not known (Asqalany, 2015). The term of forced marriage is not mentioned in the Al-Qur'an, but is often referred to as *ijbar*, which means an action followed by responsibility (Muhammad, 2001).

The word *ijbar* comes from the word *ajbara-yujbiru ijbaaran*, which has the same meaning as *akraha*, *arghama* and *alzama qahran wa qahran*, which denote

coercion or compulsion (Gunawan, 2019). It means a marriage forced on the basis of hard coercion, in which there is no willingness between the two parties (Asy-Syaukani, 2006).

Based on the above explanation, in general, forced marriage occurs due to parental coercion. However, the forced marriage that occurs in the Lekuk Lima Puluh Lima Puluh Tumbi Lempur community is a customary witness in which there is coercion. According to the *fuqahā'*, *ikrāh* is one of the causes of the invalidity of a marriage.

Most scholars, except for the Imam Hanafi, agree that the marriage contract agreed upon by the prospective bride and groom must be on a voluntary basis; that is, consensual without any coercion, an opinion confirmed by Sayyid Abu al-Hasan al-Isfahani, who argued that for a marriage contract to be valid, it must be on the basis of the will of the bride and groom. If one of them feels that he is being forced to get, then the contract is invalid, but if he is unwilling to do so, then the marriage contract is valid (Mughniyah, 1996). However, even though this will be the case when there is mutual liking or consent between the married couple-to-be, the majority of scholars continue to believe that the contract will be valid if there is a *ijāb*, *qabūl* and a guardian is present (Mughniyah, 1996). This is because the approval or willingness of both men and women is very important in marriage, as the institution is a strong and long bond between husband and wife living together so that marriage can run well (Armia, 2011).

For the indigenous people of Lekuk Lima Puluh Tumbi Lempur, forced marriage is a tradition that has been in place for a long time, has been enforced repeatedly, and is a legacy. If viewed from the perspective of Islam, it can be seen from two perspectives, namely according to *urf* or just custom. *'Urf* is a saying or action that refers to the constancy of an action that can be accepted by common sense. Therefore, it is understood that *'urf* can be classified into three elements, namely behavior that strengthens the soul; which can be accepted by common sense; and accepted by human nature, whereas a habit is something that is observed repeatedly but is not related to rationality and cannot be acceptable by reason. (Sucipto, 2015). Therefore, we consider the tradition of forced marriage to be *'urf* because it is acceptable to reason.

However, after establishing that forced marriage is *'urf*, it is necessary to consider its minimum prerequisites for application, namely determination (*al-istiqrār*) and continuity (*al-istimrār*). *Al-istiqrār* is the condition that the *'urf* has the approval of the community, is permanent and does not change, because if *'urf* has

been established as a legal rule, then it must be stable and not change over time (Harisudin, 2016). On the other hand, *al-istimrār* is the implementation of custom which is observed continuously, in which case the determination of *'urf* can become a law, as it is not something new. Consequently, forced marriage become *'urf* because it has been a continuous custom and not a new phenomenon.

It is also necessary to consider whether the tradition is contrary to Islamic teachings or not. Even if it is against Islam, it does not directly destroy it, but can also modify it in line with Islamic values (Harisudin, 2014). Therefore, there is the need for a clear category analysis of *'urf*, namely the category of *'urf ṣaḥīḥ* or *fāsid*. If *'urf* is authentic, then another basis must be found that states the same; for example, *maslaḥah* and *istiḥsān*. For example, in the case of preceding over a sister to get married, in the community tradition it is necessary to pay a certain amount of money.

With regard to forced marriage in the Lima Puluh Tumbi Lempur, several related aspects need to be considered, such as its benefits and drawbacks. For this, the triple movement method. To analyze the law of *'urf*, it is necessary to perform three movements: first, analysis of customs or traditions when first is enacted; second, to establish whether there have been changes in the current custom; and if this is the case when viewed from prespective after the custom was implemented.

In the first analysis, the beginning of the enforcement of forced marriage customs, there was an incident of a couple being attacked by a tiger, which the community considered was a punishment for having committed an act prohibited by religion (*zinā*), resulting in a prohibition against going out late at night, a move which is beneficial because it maintains honor and the lineage, and upholds the religion. Regarding the second analysis, whether the tradition has changed since it was first implemented, any change would mean that this has violated the conditions, namely *al-istimrār*, and subsequently cannot be implemented. The third analysis considered whether the impact after the implementation of the custom was more harmful or beneficial.

In the customary forced marriage based on the facts described above, if initially it was in the context of maintaining religion and honor it can be said to be a benefit. However, based on the facts explained by the couple who experienced forced marriage, when they were made to marry without being asked the reason for their return at night and whether there was mutual love, and without being asked their age, in a decision on the preconceived argument that they had committed adultery, this was unfair and the marriage was not valid because the coercion meant it violated *adat*.

Wahbah az-Zuhaili, quoted by Masthuriyah Sa'dan, explains that a marriage cannot be valid without the prospective bride and groom being asked about their willingness. If one of them is forced to marry by *ikrah*, with threats of beating, criticism, imprisonment or even murder, then the marriage *adad* is damaged (*fasad*) (Sa'dan, 2016). This will clearly cause greater harm than benefit if it relies on the rules of *fiqh*, which is the *ijtihad* of scholars (Hilal, 2013). In this case the following rule applies:

الضرر المفسد لى لب المصالح

"Removing harm takes precedence over taking a benefit" (Zaidan, 2000).

If it is better to eliminate harm than to receive the benefit, then what are the disadvantages that are faced as a result of forced marriage, such as seen in the interviews with pairs N (male) and L (female) and partners M (male) and R (female)? These two couples experienced forced marriages that were not based on consent and age.. This resulted in their marriage being unharmonious and ending in divorce.

Divorce is something that is allowed by religion but is hated by Allah. Its impact will be greater than the benefits, such as property problems, and even have an impact on any children (Luhuringbudi & Yani, 2018). In addition, the purpose of forced marriage must be seen from the aspect of the intention as the rule of *al-umūru bi maqāṣidihā* applies, meaning that all matters depend on the purpose (intention) (Muqorobin, 2007). The purpose of this rule is the main purpose of the intention, which is preceded by distinguishing between *'ubadah* and *'adat* (Muiz, 2020). This means that worship takes precedence over custom; forced marriage can be seen in terms of the intention, whether it is because of sincerity to marry with the aim of carrying out worship, or whether it is only because of customary demands. If it is intended for worship, then forced marriage is permissible and a blessing, but if it is the other way around, then the marriage is invalid because of coercion.

If it is seen that forced marriage is a custom which can become a law according to the rules of *fiqh al-ādah muḥakkamah* (Musyafaah, 2018). That is, customs can be taken into account in determining the law (Mubarok & Faizal, 2006). The custom can become a law, but other aspects still need to be considered, because not all customs can be made into a law. With regard to the forced marriage custom, it has been observed for a long time and has been passed down from generation to generation, but for it to be directly enacted into law, consideration is needed in determining the law by taking into account the *shari'a* aspects and benefits, as previously described.

Islam highly values the existence of customs as demonstrated by the apostle. However, the problem is when these customs conflict with Islamic law. Both aspects of benefits and ones of harm that can be caused, so the impact of forced marriage as a sanction is clear, as imposed regardless of all aspects of the cause, including the chronological and consensual and in relation to age, which are only based on coercion by custom. Therefore, this can cause greater harm than benefit, so the custom should be abandoned. It is different if the customary sanctions are taken considering the aspects of chronology, consensuality and age, as well as taking into account the impact of the post-sanction and whether the *maṣlahah* or harm is greater. The author is of the opinion that the forced marriage custom can still be implemented. In this situation, *'urf* is not a destroyer of tradition, but becomes a means of providing Islamic values in the customs, and habits of the community.

D. Conclusion

From the explanation above, it can be concluded that the custom of forced marriage as a sanction for couples who come home later than 20:00 cannot be separated from religious factors, and the maintaining of religion by observing religious orders and prohibitions, such as the prohibition of adultery. Social factors, include the community's understanding that couples who commit forced marriage are considered to have committed adultery. Customary factors include maintaining the existence and sustainability of traditions that have been inherited. The impact that arises from forced marriage on the perpetrators is the psychological impact on families, leading to disharmony and resulting in divorce, and in the community a sense of overprotectiveness of parents of their children. In Islam, this customary practice is known as *ikrah* or coercion and is strictly prohibited. If it is violated, then the marriage is invalid; forced marriage is categorized as *urf* because it has fulfilled the conditions (*al-istiqrār*) and continuity (*al-istimrār*). However, in its implementation, forced marriage will vary as a sanction that is imposed without considering all aspects of the cause, including the chronological and consensual. In summary, the author is of the opinion that forced marriage customs can still be observed. In this case, *'urf* is not a destroyer of tradition, but becomes *wasilah* in providing ancient values in the customs, traditions and habits of the community.

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