**INSTITUTIONALIZATION OF COMMUNITY MEDIATION AS AN ALTERNATIVE OF MARRIAGE *(MERARIK)* DISPUTE SETTLEMENT**

**SASAK LOMBOK COMMUNITY**

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**Abstract**

This research originated from the idea that the implementation of customary law needs to be balanced with the use of formal means in the form of community mediation so that legal gaps do not accour that can weaken the existence of customary law if settlement of custom disputes is resolved through the courts. Research this uses a method social legal research, and the results that are institutionalization of community mediation is an effort to strengthen the existence of customary law by institutionally integrating community mediation into the national justice system through strengthening the results of mediation have to the power of law as a court decision, In addition to placing community mediation as a work unit *bale* (home) mediation in each region as a tiered mechanism in the national justice system. Through such efforts it is hoped that community mediation can take the role of the court especially on marriages *merarik* arising because in practice this tradition has the potential to give birth to latent and manifest conflicts.

Key words: community mediation, marriage *merarik*, conflict.

**Abstrak**

Penelitian ini berawal dari pemikiran bahwa implementasi hukum adat perlu diimbangi dengan pendayagunaan sarana formilnya berupa mediasi komunitas agar tidak terjadi kesenjangan hukum yang dapat melemahkan eksistensi hukum adat jika penyelesaian sengketa adat diselesaikan melalui pengadilan. Penelitian ini menggunakan metode *sosial legal research*, dan diperoleh hasil bahwa pelembagaan mediasi komunitas merupakan upaya untuk memperkuat eksistensi hukum adat dengan mengintegrasikan secara kelembagaan mediasi komunitas ke dalam sistem peradilan nasional melalui penguatan hasil mediasi agar berkekuatan hukum sebagaimana putusan pengadilan, selain menempatkan mediasi komunitas sebagai unit kerja *Bale* (rumah) Mediasi di masing-masing daerah sebagaimana mekanisme berjenjang dalam sistem peradilan nasional. Melalui upaya yang demikian diharapkan mediasi komunitas dapat mengambil peran pengadilan terutama terhadap sengketa-sengketa yang lahir dari perkawinan *merarik* karena dalam praktiknya, tradisi ini berpotensi melahirkan konflik yang bersifat laten dan manifest.

Kata Kunci: mediasi komunitas, perkawinan *merarik*, konflik.

1. **INTRODUCTION**
2. **Background**

The pluralistic structure of Indonesian society seems to have implications for the diversity of customary laws that apply to Indonesian society. The diversity of customary law is not only at the level of principles and norms but also in the procedures for resolving disputes that occur in the midst of society (Haq and Nasri, 2016: 251).

In the past, almost all of Indonesia had traditional institutions that functioned as community mediation, given that culturally Indonesian people highly upheld the consensus approach (Mushadi, 2007: 38). For example, in Tapanuli, in the Karo Batak community there is a village consultation organization called *runggun adat* which functions to examine and resolve disputes that arise in the community. In Aceh there are a number of local wisdoms related to the way of resolving disputes among the community, namely the so-called *di'iet, sayam, suloh, peumat jaroe*. In Bali there is also a peace institution known as *muditha kertas sabha* or *kertha dese* which means a place for a desea to seek peace. In Maluku, especially in Central Maluku, customary institutions in dispute resolution are known as *saniri negeri* and *saniri raja putih* (Haq and Hery, 2016: 22).

As in other regions, among the indigenous people of NTB Province (Sasak, Samawa, Mbojo/SASAMBO) also known as dispute resolution institutions by means of deliberation and consensus. In the Samawa community on the island of Sumbawa there is a customary institution called the traditional *tana samawa* institution or customary institutions Whereas in the community of Mbojo, there was a customary institution called *mbolo radampa* and *kesama nggahi ra eli*. Particularly among the Sasak people who in habit the island of Lombok, they know what is called *soloh* or *begundem*, namely the resolution of disputes outside the court which is carried out through a process of deliberation and consensus between the parties to the dispute, where customary dispute resolution institutions have been formed by a long history (Haq and Hery, 2016: 22).

Today the existence of community mediation is beginning to be marginalized, this condition is driven by the assumption of some people that the court is the best place to resolve disputes. Therefore, it is not surprising that in many courts there was a buildup of cases. This belief also applies to disputes arising from customary practices, such as the marital dispute that ends in court.

*Merarik* is the most common form of marriage in the Sasak community. This marriage is carried out by escaping or freeing the girl from the bond of her parents and family (Tim Departemen Pendidikan dan Kebudayaan, 1995: 33). This tradition is also followed by a number of consequences, including twelve (separated) which often end in physical contact, if on the run it is known or caught by the girl and the man who is the competitor. Therefore, the outcome of the conflict over the implementation of this tradition can be latent and manifest.

The latent conflict is in the form of resignation from parents to marry off their children who have been taken away because in the view of the Sasak people, if the child is taken back, it will become a disgrace to his family and environment. Latent conflicts can also develop into manifest conflicts because *merarik* marriage indirectly contradicts the provisions of national law, especially Article 332 paragraph (1) to 1 of the Criminal Code which prohibits someone from taking away a woman who is not yet mature without the parents or guardians wanting, despite such events occurred on the basis of the woman's agreement. Where as in practice, it is not uncommon for marriages to be carried out when they have been *aqil-baliq* because Islam as the religion of the majority of Sasak people considers marriage to be an order of religion, in addition to requiring its followers to immediately marry if they have the ability to carry it out (Haq and Hamdi, 2016: 160).

Departing from the background of the above thinking, the implementation of customary law needs to be balanced with the utilization of formal means in the form of community mediation so that its existence is not marginalized through court decisions. Such efforts are at the same time as entry points in order to strengthen the position of customary law in the national legal system considering that modernization of law often negates the existence of customary law which should be a reference for the development and development of national law.

1. **Problem Formulation**
2. How is the description of conflict in marriage *merarik* attractive in the Lombok Sasak community?
3. How are efforts to institutionalize community mediation as an alternative to settling marital dispute marriage *merarik* in Lombok's Sasak community?
4. **RESEARCH METHODS**

This study uses the method of socio legal research (non-doctrinal), where the law is conceived as a manifestation of the symbolic meanings of social actors as seen in interactions between them (Wignjosoebroto, 2002: 148). This research is intended to find theories about the process of the occurrence and operation of law in society.

The data in this study were collected through intensive and in-depth interviews with informants and unstructured observations through several informants in various situations, as well as literature studies. The data found are then dialogue with theories or concepts that are relevant to the research variable. Based on these efforts, interpretations are then carried out by looking at the correlation between one data and another, so that it can produce output as the research objective.

1. **RESEARCH RESULTS AND ANALYSIS**
2. **Description of Conflict in Attractive Marriage *Merarik* in Lombok's Sasak Community**

Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the One Godhead (Article 1 of Law No. 1 of 1974 concerning Marriage). Marriage is a process of human transition from the level of life of adolescents to family life. There fore, marriage is considered as the first and foremost foundation in realizing the community, it can even be said that community groups will never be realized if there is no marriage relationship between men and women.

The Sasak people recognize several forms of marriage such as *memagah* (eloping accompanied by coercion), *nyerah hukum* (the traditional marriage of Sasak girls to men from outside the Sasak which is handed over to the girl's family, thus affecting the position of men as housemaids for parents the girl), *kawin gantung* (the marriage of the children), *belakoq* (applying), and *merarik* (marrying on the basis of the agreement of the two brides). But from some forms of marriage, *merarik* is the most common form of marriage in the Sasak community.

*Merarik* comes from the Sasak language which means to run. *Merarik* also contain two meanings; (1), namely the technique or method relating to the act of escaping or freeing the girl from the bond of her parents and family; (2), the overall implementation of the marriage according to the Sasak custom (the results of an interview with Raden Rais/Sasak community leaders, dated January 12, 2017).

*Merarik* has its own uniqueness when compared to the common form of marriage that applies in society, namely by applying for marriage. Historically it has been *merarik* against the background of efforts to maintain social status in the life of the Sasak people because previously the social strata placed a person or group of people in different, lower and higher positions. Such a principle is manifested in the form of what is called the noble class (frightening), the second group is *pruangse* and the third group is feathered honestly. For the second and third groups there is no restriction by adat to marry each other. While these two groups with the first group whose social status is considered higher, then adat applies a rule that women from the first group are not allowed to marry men from the second and third groups to maintain the lineage to remain in their social status (Rahman, 2013: 135).

Such customary enforcement has led to protests from the second and third groups. Both of these groups still hold the principle of independence that the determination of matchmaking is the authority of every person who wants to carry out marriage, besides because they do not want to be treated by the first group that gives men from their group to marry women who are not of their group and not vice versa (Rahman, 2013: 135).

Departing from these conditions, marriages with a run *(merarik)* were finally chosen as a way to maintain the self-esteem of the second and third groups, which later gave birth to idioms including the sale and purchase of *manuk* (such as buying and selling chickens), meaning marriage done by begging (wooing) from the male side to the woman is the same as lowering the social status of the woman (Rahman, 2013: 136).

Bertholomey points out that pulling is important in Sasak marriages, as he describes it in the following sentence fragment (Bertholomey, 2001: 204): "I do not want to marry a man who does not dare to risk running away with me, he will be weak, good both in my eyes and in other people of my village if he asked my father for permission. Actually my dad would throw him outside the house if he tried to do that. "

Sasak people are generally permissive to *merarik* practices, there are five reasons that underlie why they agree to the practice of drawing, namely: (1), *merarik* is a custom and is not entirely contrary to Islamic teachings; (2), drawing is an ancestral heritage that has become a tradition; (3), attractiveness can increase the happiness of a married couple; (4), attractive can improve the husband's social status or wife's social status; (5), *merarik* is considered as something normal or normal (Yasin, 2008: 169).

*Merarik* can also be seen as a customary way of placing the position of Sasak women as independent individuals in choosing and determining men who will become their life partners, in addition to minimizing the male offense that the girl rejects if the marriage is done by marriage (belakoq), especially if the party in marriage comes from several families or close relatives of the girl's parents. (the results of interviews with RadenRais/Sasak community leaders, January 12, 2017).

In practice, marriage *merarik* is not always going well. In addition to the age of women who are underage, differences in class or social class (nobility) so that the disapproval of female parents towards men often triggers conflict on marital marriage, including in terms of determining the amount of payment for *ajikrame* or *pisuke* (elopement gift) by men to women who are part of the process of marriage *merarik*. Therefore, the outcome of conflict from this tradition can be latent and manifest.

Latent conflict occurs because there is tension between individuals in a group that does not appear on the surface (Sipayung, 2016: 31), as the disappointment of a father in Kediri, West Lombok who told me that he was forced to marry his daughter, so that his daughter chose to drop out after being taken away, or vice versa there is an attempt by parents to prevent parties who question their child's decision to get married early after he was rushed, such as by luring some money as happened in Barabali, Central Lombok.

The manifest conflict which is a reaction to latent conflict has caused some interesting practices *merarik* to end in court, such as what happened in Aik Darek, Central Lombok in 2008. This case stems from the disapproval of a woman's parents because her daughter was taken away by her lover, even though the incident was carried out the girl's request. This case has been decided by the Praya District Court based on Article 332 paragraph (1) to 1 of the Criminal Code, by imposing prison sentences of one month and fifteen days against men through court decisions Number 232/Pid.B/2008/PN.Pra (Putro, 2013: 49-51). Likewise with the practice of drawing in the Setangor area of ​​Central Lombok which has been declared as P.21 by the Police based on the report Number LP/185/V/2017/NTB/RES LOTENG due to the disapproval of the female parents because their daughter was taken away.

It is not easy to conclude whether an act of escaping the girl is part of the conduct of marriage *merarik*, because for those who consider ("misusing") *merarik* as an instant way to get married, especially if the relationship is never blessed, parents can act as shields. in order to smooth out what is his will. Therefore, to maintain the nobleness of this tradition, it is necessary to have the role and continuity of mediation to identify whether an act belongs to a part of collective practice, therefore the authority to settle disputes should be in the domain of community mediation, except in the case of criminal acts such as conflict *merarik* in in the Kelantih area of ​​Central Lombok in 2010 with one person killed, three people were seriously injured and three houses were burned as a result of misunderstandings in dealing with the practice *merarik*.

Along with the times that often change the society's view of the law, maritime marriage is still maintained by the Sasak people, although this tradition is contrary to the rules of national law that can ensnare them as perpetrators of criminal acts. Therefore, it is not surprising if customary law is considered to have a different reason from national law so that its existence needs to be balanced with the existence of community mediation, including institutionalizing efforts to accommodate the legal needs of the community for executorial positions and powers which are considered to be the weaknesses of today's community mediation.

1. **Institutionalization of Community Mediation as an Alternative to Settling Attractive Marriage *Merarik* Disputes in the Lombok Sasak Community**

Understanding local wisdom-based dispute resolution as a traditional dispute resolution mechanism can be interpreted as an effort to revive cultural values ​​that have been forgotten so far due to the strong currents of modernization that surround people's lives. As a nation that is rich in customs, the state should provide space and facilitate the community in empowering the values ​​of local wisdom, including in resolving disputes (Haq and Nasri, 2016: 253).

Ade Saptomo views that in social life, the principle of family is a traditional institutions that were used to resolve disputes and consensus principles are undeniably part of the wealth of Indonesian culture, but are not naturally developed to resolve disputes, due to the tendency of today's society displaying a culture of suing suing so that the judiciary is overwhelmed in resolving disputes (Saptomo, 2001: 97).

In practice the national justice system is also inseparable from a variety of weaknesses, including judges as judges almost lacking in in-depth knowledge of the social conditions of the disputing parties including their environment, so when deciding cases, these social aspects tend to be neglected. Work orientation which is based on the outcome of the process, makes the judiciary more pursue the quantity target such as the number of cases handled, the speed of resolving rather than considering the quality of decisions, namely honest and fair case decisions. As a result, in handling cases, the judiciary is often trapped using "horse goggles", which only sees the legal aspects (Haq and Hery, 2016: 23).

According to Bernard, Judges should be able to minimize the distance and the discrepancy between law and justice, among others by exploring, following, and understanding the legal values ​​that live in society. But this is a burden that is fairly abnormal in the logic of the work of a judge who is prepared to implement the law as something that has been set (law). Therefore, in such conditions the parliament is responsible for marrying law and justice by making quality legal rules (Tanya, 2006: 13).

Listening to marital disputes *merarik* in Aik Darek, Central Lombok, which actually ended with the guilty verdict by judges based on national legal norms, indicates how the character of legal institutions claiming rule of law with exclusive law enforcement patterns seems to be less collaborating with citizens. On the other hand, the formal law built by the state does not function optimally. Therefore, one effort that can be done is to re-involve the community in the dispute resolution process outside the court through community mediation.

In the past, the Sasak people tended to choose *berugak* or *santren* as a place to resolve disputes, including disputes arising from marital marriage. Likewise with village officials, religious leaders and community leaders who become mediators. This place is considered effective by the community because it is far from a formal impression, where the parties feel comfortable to express their problems openly. This in turn makes it easier for those who act as mediators to direct the parties to the dispute on peace, compared to having to resolve disputes through forums with formal mechanisms such as the Police and Courts which often end with the imperative efforts of the state, in addition to consideration of the amount of costs they have to spend. But now the community is beginning to consider that the court is the best place to resolve disputes considering that court decisions can provide legal certainty, especially with regard to executive rights to the disputes they face (the results of interviews with AbidinTuarita/North Lombok community leaders, February 11, 2017).

As a comparison for the institutionalization of community mediation, it is necessary to examine the process of the formation of mediation institutions as in Australia, which ultimately based on government policy directs all civil disputes to be resolved through mediation, as stated by Warwick Soden who is the Chief of Executives/Registrar of The Federal Court of Australia at an international seminar with the theme "Institutional Development to Support Community Mediation through the Role of Government, Courts and Non-Governmental Organizations", organized by Australia Indonesia Partnership for Justice (AIPJ) in collaboration with the Indonesian Supreme Court and implemented in 2015 in Mataram.

Australia which adopts a British legal system, namely the Anglo American legal system or angglo saxon has a traditional justice institution in resolving disputes because they consider that the judiciary is not necessarily the best in resolving disputes. This is because legal problems that occur in the community are not always triggered by legal problems but other social issues. Therefore, in the 1980s the community asked for a trial outside the court with a small scope. Then on that basis a Community Justice Center was formed in order to find out the issues that were discussed or disputed.

Initially, the problems resolved through the Center for Community Justice were problems that revolved around family disputes, but in its development the court outside the court was seen as important and finally many commercial cases were resolved at the Center for Community Justice, so this was seen as a solution to the problem of delinquency (backlog). The success of the Center for Community Justice as an alternative to dispute resolution and a solution in solving legal problems is seen as important in the administration of law in Australia so that in 1983 the concept of mediation in court was formed (Court Annexed Mediation). This court began to draft the concept of mediation and mediate in court.

Then in 1987 the Federal Court Mediation Program was formed with a pilot program in the NSW Registry that had the authority to try the concept of mediation. Dispute resolution through mediation is based on case value. The parties will see whether the case can be resolved through mediation or not, if it can be done through mediation it will be sent to be processed or resolved through mediation. In a situation like this, lawyers can promote themselves to be mediators of cases faced by entrepreneurs. In its development the mediator succeeded in reconciling the parties to the dispute. Later mediation by the court will be scheduled with the agreement of the parties in order to resolve the dispute between the parties.

In the early 1990s, mediation received encouragement and credibility from the community, this later became a movement, for example a number of courts made a list of mediators, which later became a reference for conducting mediation on a regular basis as well as a reference for parties to choose these mediators. In June 1991 the Federal Court of Australia Act 1976 was amended to allow courts to resolve disputes through mediation, provided the parties agreed to resolve their legal dispute by mediation.

In 1995 Federal Attorney General announced the formation of a national alternative dispute resolution advisory council (NADRAC) to encourage the expansion of alternative dispute resolution as part of a strategy to reduce legal costs and improve access to justice. NADRAC is a solution related to the issue of court implementation so far, namely insensitive courts, expensive courts, slow courts, which ultimately the government sought facts in the field related to these issues. Reports on field findings are reported to the government. Based on the report, it was concluded that the need for a national advisory body for the federal court government on issues of alternative dispute resolution (ADR). To help achieve and maintain a quality, accessible and integrated federal alternative dispute resolution system (ADR), a guideline was established that regulated criteria related to mediation accreditation. Federal courts are appointed as mediation institutions accreditation institutions. Therefore, in 2012, the government issued a legal regulation regarding the need to resolve civil disputes through mediation, so that mediation developed very rapidly in Australia, and even many lawyers claimed and highlighted themselves as mediators rather than as legal counsel.

Description of the holding of a mediation forum like Australia, its existence also occurs in Indonesia. The results of Keebet von Benda Beckman's study in the Minangkabau countryside, West Sumatra, show that there is a tendency for disputing parties to make choices among existing institutions (customary institutions and district courts) that are deemed beneficial in accordance with what the parties expect dispute. In addition, existing informal dispute resolution institutions, in certain cases also actively offer services to resolve disputes that occur. That is why, in addition to the "shoping forum" phenomenon, the "shoping forum" also appeared (Tanya, 2011: 24).

Bernard's findings on Sabu describe that in terms of disputes involving something that is fairly principle and vital, such as customary land disputes, the community always considers the factors who know the most about the subject matter of the dispute. The most trusted parties to solve it are leaders who are considered to have knowledge of the disputed land. In village forums, relatives, traditional and religious councils, there are figures who have knowledge of the history of the disputed land, shared customs, relations of the parties, social rules of local religious customs, even to a certain degree, the rules of state law. The functionaries of these forums are figures whose legitimacy, socially, culturally and formally is recognized. While the court, only has knowledge of state law, and very few, even does not know at all the story of the disputed land. That is why there is concern about the possibility of a "historical error" in the land of dispute if taken to court. This finding has indirectly confirmed Trubek's thesis which states that there are several disputes that are less suitable resolved through the courts, namely family disputes, controversies between neighbors, demands that include a small amount of money, and problems that arise in the management of long-term trade relations ( Tanya, 2011: 24).

Nowadays, various developing discourses concerning strengthening community mediation have led to two major concepts about how the position of community mediation should be in relation to the established state justice system. The first option is to integrate institutional mediation in order to become part of the state justice system. This proposal aims to provide a stronger binding force for the results of mediation that was born through a community mediation forum. The second option is substantial strengthening of community mediation without the need for institutional integration as the first choice. The goal to be achieved is the deconcentration of the burden of cases that accumulate in the court, so that what is needed is the availability of a variety of options for settlement of disputes in the community (Yance Arizona in Jiwa and Sandra, 2015: 58).

The seriousness of the government in this case the Supreme Court of the Republic of Indonesia to encourage dispute resolution through mediation appears with the issuance of PERMA Number 1 of 2008 concerning Procedure for Mediation in Courts. In this PERMA in particular Article 23 provides an opportunity for disputing parties to settle their disputes outside the court provided that they are assisted by a certified mediator. The conditions that require certified mediators are not in line with the facts on the ground, where many dispute resolution practices are carried out by community mediators such as adat leaders, religious leaders, most of whom do not have formal certificates as mediators.

In line with these developments the Supreme Court then attempted to make repairs by evaluating the 2008 PERMA No. 1. The result was born PERMA No. 1 of 2016 concerning Procedure for Mediation in Courts. One important point of this PERMA for the development of community mediation is the recognition of the existence of non-certified mediators. It is expressly stated in Article 36 that "Parties with or without the assistance of a certified Mediator who has succeeded in resolving disputes outside the Court with a Peace Agreement can submit a Peace Agreement to the Court that is authorized to obtain a Peace Deed by filing a claim".

This momentum later became the beginning to revive the role of community leaders/traditional leaders through customary institutions (*Krama Desa)* which were formerly known as Village Peace Judges (Dorp Sacten) whose existence was annulled by Emergency Law No. 1 of 1951 where all power the court of justice, self-reliance and customary justice are transferred to the authority of the state court. The spirit in the two PERMA is a new chapter for the institutionalization process of community mediation in NTB. This process began when in 2015 the Supreme Court of Indonesia in collaboration with AIPJ made a pilot project to resolve disputes through court mediation. The project is located in three provinces, namely West Sumatra, NTB and in Banten. Among the three provinces, the government and the NTB community apparently responded very well. Through the West Nusa Tenggara Governor Regulation No. 38 of 2015 concerning *Bale* Mediation it is a new chapter to revive the values ​​of the local wisdom of the NTB community especially in resolving disputes.

Observing the article by article in the Pergub specifically related to the task of *Bale* Mediation there are shortcomings in which the *Bale* Mediation is not given the task and responsibility to conduct mediation. But in practice many people expect the *Bale* Mediation to mediate the disputes they face. Departing from these conditions, there was an encouragement from the community to improve and improve the status of the Pergub to become a Regional Regulation.

At the encouragement, the NTB government responded positively to people's wishes. After going through a fairly tough process, in 2018 to be exact in July the NTB provincial government officially raised the status of the governor to become a regional regulation with several improvements. Regional Regulation No. 9 of 2018 was born about the Mediation Bale. This regulation is a unique local regulation because it is full of legal breakthroughs. In the laws and regulations in Indonesia, in general it only accommodates civil cases that can be mediated. However, in Perda No. 9 of 2018 one step ahead with the breakthrough to resolve cases not only civil but also criminal cases, especially minor crimes, including marital disputes which in some cases seem to be criminalized by law enforcement officers. Therefore, the existence of the Regional Regulation is expected to be a means for Sasak people to strengthen the existence of marriages through consensus that is in favor of the interests of the Sasak people. Therefore, to strengthen the position of the institution, it is necessary to develop a network of *Bale* Mediation to the village level, namely by optimizing the existence of community mediation in villages such as the Village Security Agency Sintung, Sempage Valley Village Council, Fair Body Pujut village, *Krame Desa* Mataram and other community mediations, so that unresolved marital disputes at the village level, it can be endeavored to end up resolving up to *Bale* Mediation as a tiered mechanism in the national justice system.

1. **CONCLUSION**
2. Marriage *merarik* in the Sasak community has the potential to produce latent conflict and manifest. Latent conflict in the form of resignation of parents after their daughters are taken away, while manifest conflicts occur because of the opening of opportunities for conviction of those who do marriages by means of pulling *merarik*.
3. Institutionalization of community mediation is carried out in two ways; (1), institutionally integrating community mediation into the national justice system by providing executive (binding) power to the results of mediation on disputes arising from marital marriage *merarik* practices; (2), placing the position of community mediation as a work unit of *Bale* Mediation in each region.

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