

Harmonization of Positive Law as A Value System with Law as Social Reality: A Case Study of the Culture of Kawin Tangkap (Piti Rambang) in Southwest Sumba, East Nusa Tenggara

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ABSTRACT: The phenomenon of kawin tangkap (piti rambang) in Southwest Sumba is essentially a sacred customary tradition symbolizing the union of two families. However, over time, this practice has been distorted, often carried out without the woman's consent and even accompanied by acts of kidnapping, confinement, and forced marriage. This shift in meaning has given rise to a conflict between customary law as living law and Indonesian positive law, which emphasizes the importance of free consent, the protection of women's rights, and the prohibition of all forms of violence, as stipulated in the TPKS Law and the Human Rights Law. This study focuses on three main areas is a concrete description of kawin tangkap, factors driving the practice of kawin tangkap, and strategies for harmonizing customary norms and national law. The methods used are normative legal research through legislative approaches, conceptual approaches, and case studies. The results show that cases occurring between 2020 and 2023 have relatively similar patterns of violence, namely, the forced removal of victims, confinement, and forced customary proposals. The main causal factors are related to legal factors such as legal substance, legal structure, and legal culture. Non-legal factors also contribute to the shift in the meaning of kawin tangkap practices, such as patriarchal culture, economic motives, and social status. This research confirms that kawin tangkap are a violation of the law and a form of gender-based violence. Harmonization efforts can be implemented through the development of Regional Regulations that eliminate coercion, strengthening dialogue between the government and traditional leaders, and increasing public legal awareness through human rights education. These steps are expected to maintain positive cultural values without sacrificing women's rights and dignity.

KEYWORDS: Kawin Tangkap; customary law; positive law; harmonization; women's rights

I. INTRODUCTION

The phenomenon of *kawin tangkap* (Piti Rambang) is a tradition that developed in Southwest Sumba, East Nusa Tenggara Province, and has been passed down through generations (Wiwin et al., 2025). From the perspective of indigenous communities, *kawin tangkap* was initially viewed as a highly respected and sacred tradition because it was believed to strengthen family ties. This practice was carried out based on mutual agreement. Over time, the meaning of the practice of *kawin tangkap* has shifted significantly. While *kawin tangkap* was once considered sacred, it is now often practiced incorrectly, even tending to deviate from its original cultural values (Joti, 2025). In contemporary practice, *kawin tangkap* is often carried out without the consent of the woman or her family, making it more akin to kidnapping or *kawin tangkap*, which has been categorized as a violation of the law (Utama, 2024). This phenomenon has caused significant controversy, because on the one hand it is still considered a cultural tradition, while on the other hand it raises serious issues related to the protection of human rights, especially women's rights (Zandri & Kustantinah, 2025).

Within the framework of Indonesian positive law, the practice of *kawin tangkap*, which involve coercion, clearly violates applicable regulations. Article 1 of Law Number 1 of 1974 concerning Marriage states that the purpose of marriage is to establish a happy and eternal family based on the One Almighty God. Article 6 of the Marriage Law also emphasizes that the consent of both prospective bride and groom is a prerequisite for a valid marriage. Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, also known as the TPKS Law, explicitly prohibits *kawin tangkap*, including those carried out in the name of culture or tradition.

Kawin tangkap against women constitute an act of violence, both physical and psychological, and can cause psychological

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distress. Women who are victims of *kawin tangkap* often experience serious multidimensional impacts. Psychologically, the trauma experienced manifests itself in the form of severe stress due to sexual violence such as being squeezed, harassed, or raped, prolonged fear, and pressure that causes discomfort due to humiliation by the male partner (Purnomo et al., 2024).

Furthermore, the Criminal Code, referred to as the Criminal Code (KUHP), also provides a criminal basis for kidnapping, coercion, and other acts that degrade the dignity of women (Kaimuddin Haris et al., 2023). Law Number 39 of 1999 concerning Human Rights, in Chapter III concerning human rights and human freedoms, is regulated in Articles 45 to 51, which regulates Women's Rights, which states: "Everyone has the right to defend life, the right to live and improve their standard of living." This means that women have the right to live decently and improve their quality of life (Ambarsari et al., 2025).

From a customary law perspective, *kawin tangkap* is considered a means of resolving conflicts over dowries (*belis*) and as a symbol of legitimacy of kinship between two extended families (Djaga Mesa & Putra Frans, 2024). Positive law emphasizes the principles of consent, equality, and the protection of individual rights, while customary law emphasizes the legitimacy of tradition and kinship. The conflict between customary law and positive law demonstrates the disharmony in legal practice in Indonesia. On the one hand, the state is obliged to protect the rights of citizens based on constitutional principles and statutory regulations, but on the other, indigenous communities demand recognition and respect for their ancestral culture.

Gustav Radbruch explains that the law must reflect three fundamental values: justice, expediency, and legal certainty (Afdhali & Syahuri, 2023). Within this framework, a marriage is only valid if based on the consent of both parties, and any form of coercion violates the law as a system of ideas or positive law. Meanwhile, law as reality represents law as it truly lives and is implemented in society. Eugen Ehrlich calls it living law, namely law that grows and develops in society from customs, traditions, and patterns of daily interaction (Apriani & Hanafiah, 2022). In Sumbanese society, this living law is evident in the continued tradition of *kawin tangkap*. However, it is necessary to examine whether the laws that have emerged and developed within the community, such as the practice of *kawin tangkap*, have a positive impact or a negative impact, namely, whether they contradict positive law, which aims to promote social welfare.

Roscoe Pound also argued that law is not merely written rules but also a means of social engineering (law as a tool of social engineering). Thus, the law must be able to balance the ideal demands of protecting individual rights with the social reality of respecting customs (Gojali & Fauzi Nazar, 2022). Satjipto Rahardjo, through progressive legal theory, provides a relevant perspective: the law should not be merely a rigid text, but rather should side with humanity (Aulia, 2018). In the case of *kawin tangkap*, progressive law demands an approach that goes beyond punishment and also educates indigenous communities to respect women's rights without eliminating positive cultural values.

Previous research referring to monitoring by the National Commission on Violence Against Women (Komnas Perempuan) indicates that the practice of *kawin tangkap* in Sumba is still ongoing and exhibits a consistent pattern of violence. In the first phase of monitoring, Komnas Perempuan collaborated with the Solidarity Organization for Women and Children (SOPAN), which recorded approximately 12 cases of *kawin tangkap* from 2013 to 2020. Of these, four victims were children aged 13 to 17, while the rest were adult women up to 30. Monitoring results also showed that two victims were ultimately forced into marriage, three victims were released, while the other victim fled to avoid *kawin tangkap* (Komnas Perempuan, 2024).

In the second phase of monitoring, the National Commission on Violence Against Women (Komnas Perempuan) found that the Southwest Sumba Police had received reports of cases of *kawin tangkap*, which were then forwarded to the prosecutor's office, leading to a court decision. Although the police stated that there were no new reports of *kawin tangkap* in 2022, the National Commission on Violence Against Women emphasized that this situation does not imply the absence of the practice, given the persistence of strong social pressures and customary mechanisms that often discourage victims from reporting. Furthermore, the prosecutor's office noted that three cases of *kawin tangkap* were brought to court and decided in 2021, indicating that this practice persists and requires more effective legal action (Komnas Perempuan, 2024).

Other studies have also addressed the conflict between customary law and positive law in cases of *kawin tangkap*. First, research by Elanda Welhelmina Doko, I Made Suwitra, and Diah Gayatry Sudibya (2021) in the Journal of Legal Construction examines the tradition of *kawin tangkap* in Sumba, which in practice tends to lead to violence against women, thus contradicting human rights principles and national law. Second, research by Muhammad Luthfi & Nu'man Aunuh (2025) in the Audito Comparative Law Journal discusses the tradition of *kawin tangkap* from the perspective of "urif" (recognized custom) and its relationship to the TPKS Law, demonstrating the dilemma between preserving cultural traditions and protecting women's rights.

These studies emphasize that the phenomenon of *kawin tangkap* is a clear example of the conflict between positive law, which emphasizes justice, expediency, and legal certainty, and law as a social reality embodied in customary traditions and social patterns. Therefore, this study is crucial to harmonize positive law as a value system with law as a social reality, particularly in the context of protecting women amidst the continuation of tradition. Based on the background presented, the research questions raised are: a. What are the concrete cases of the customary practice of *kawin tangkap* that occurs in the Southwest Sumba community?; b. What are the factors that trigger the customary practice of *kawin tangkap* in the Southwest Sumba community?; c. How can positive law as a system of values be harmonized with law as a social phenomenon in the customary practice of *kawin tangkap*?

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II. RESEARCH METHOD

This research was conducted using normative legal research to explore and analyze legislation, legal principles, and legal doctrines as a basis for addressing the legal issues under study (Marzuki, 2017). Therefore, this research utilizes a legislative approach, a conceptual approach, and a case study approach to examine how positive law and law as a social reality harmonize in the practice of kawin tangkap as part of customary traditions.

III. DISCUSSION

1. The Practice of Kawin Tangkap in Southwest Sumba Communities

a. Empirical Description of Kawin Tangkap in 2020

The first concrete case, documented by the National Commission on Violence Against Women (Komnas Perempuan) on June 17, 2020, and supplemented on July 2, 2020, involved a *kawin tangkap* in Sumba in mid-2020. This incident was initially discovered through a viral video on social media depicting the capture of a woman for marriage by a group of men in Sumba. On June 16, 2020, a woman with the initials R was kidnapped from her home in Central Sumba by N and dozens of men. R was forcibly restrained and carried into a car, then taken to a location where she could not contact her family. R was actually working in Bali and had returned home to continue her studies. After the kidnapping, N approached the victim's family to present a machete and a horse as symbols of a traditional proposal, but R's family refused and reported the incident to the police for forced entry. That afternoon, the perpetrator's family came to apologize and settle the matter according to customary law. The victim's family then withdrew the police report. However, R was not returned and remained in captivity. Meanwhile, the police stopped the investigation, citing insufficient evidence (Komnas Perempuan, 2024).

b. Empirical Description of Kawin Tangkap in 2021

In 2021, there were three legal cases arising from a single *kawin tangkap* case. In these cases, three perpetrators, identified as K, P, and DB, were assisted by four accomplices. On March 3, 2021, the perpetrators deliberately ran away with the victim with the intention of marrying her to one of the perpetrators. Two days before the incident, DB and K sought information on the victim's whereabouts and received information from S that the victim's father was in Bima. On the day of the incident, K and one of his accomplices initially grabbed the victim's hands. The victim, shocked, tried to free herself, eventually falling. Seeing this, K and another accomplice held the victim's legs and arms with all their strength to prevent her from escaping. The victim was then lifted into a pickup truck prepared by the perpetrators. During the journey, the victim's grandfather attempted to intercept him, but DB then informed the victim's grandfather that his son had taken her to marry him. DB then handed him a machete. While at one of the perpetrators' homes, the victim was under strict surveillance. The victim also pleaded to be sent home, but the perpetrator refused. The victim's family then reported the incident to the police on March 4, 2021. Based on this report, police officers then went to DB's house and managed to rescue the victim. Based on the results of the post-mortem, signs of minor injuries were found, such as abrasions on the left ankle, and reddish bruises on both of the victim's arms. Based on this incident, the three perpetrators were sentenced to prison, two perpetrators were sentenced to three years and one perpetrator was sentenced to three years and six months (Komnas Perempuan, 2024).

c. Empirical Description of Kawin Tangkap in 2023

Third case occurred in the Waimangura area of Southwest Sumba, as reported by detik.com, on Thursday, September 7, 2023. The act was carried out by 20 perpetrators who captured and abducted a woman with the initials DM. They took the woman to the home of one of the perpetrators in a pickup truck. The incident was captured on camera by a resident and went viral on social media. The Southwest Sumba Police have named four of the five perpetrators of the *kawin tangkap* case as suspects. The four perpetrators are JBT (45 years old), HT (25 years old), VS (25 years old), and MN (50 years old). Initially, the police detained five people, but after further investigation, only four were named as suspects. The perpetrators have been arrested and taken to the Southwest Sumba Police. They were charged with Article 328 of the Criminal Code and Article 333 of the Criminal Code in conjunction with Article 55 Paragraph (1) letter 1 of the Criminal Code, and Article 10 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS) (Toriq, 2023).

2. Factors Contributing to the Practice of Kawin Tangkap

The shift from the tradition of *kawin tangkap* to its transformation into an illegal practice did not occur suddenly; rather, it was influenced by several factors. Legally, these factors are (Rafif & Adlhiyati, 2023):

a. Legal Substance

Kawin tangkap is part of Sumbanese customary marriage law, understood and justified as a customary norm. Initially, *kawin tangkap* was a sacred marriage tradition in which women were treated with great respect and without coercion. However, the current practice of *kawin tangkap* has changed and no longer aligns with the original tradition. There is no positive law that specifically regulates or prohibits forced marriage, allowing the practice of *kawin tangkap* to continue. Then, in 2022, the introduction of new regulations, the Sexual Crimes Law (TPKS), which criminalizes forced marriage as a crime, brought hope for the protection of

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women's rights, even though it emerged after the practice of *kawin tangkap* had already been long-standing and deeply rooted in society (Hidayat et al., 2023). Its implementation, the TPKS Law has faced challenges, particularly in areas where the tradition of *kawin tangkap* remains strong.

b. Legal Structure

Lack of active participation by law enforcement officials and local governments in following up and monitoring the practice of *kawin tangkap*. This is reflected in official government reports, which record fewer cases than those documented by civil society organizations (Joti, 2025). The lack of initiative by law enforcement officials and local governments in conducting outreach has resulted in low public legal awareness regarding women's rights and the legal implications of *kawin tangkap* (Maharany & Ferry Rosando, 2025).

c. Legal Culture

Legal culture relates to a society's values, attitudes, customs, and perceptions of the law, which influence how they obey or comply with those laws. Legal culture plays a crucial role in the continuation of the practice of *kawin tangkap*, as a legal culture that prioritizes customary norms, is permissive of customary-based violence, and lacks internalization of modern legal values are all factors that trigger the practice of *kawin tangkap*. Transforming society's legal culture is key if this practice is to be stopped and replaced with a culture that respects women's dignity and rights.

Non-legal factors also trigger the practice of *kawin tangkap*, as follows, (Doko et al., 2021).

a. Patriarchal Cultural Factors

The dominance of patriarchal culture in Sumbanese society is a major factor in the practice of *kawin tangkap*. Men hold a more dominant position, retain primary control over family and community affairs, and make the highest decisions, while women receive disparate treatment, tending to be placed in lower or subordinate positions.

b. Economic Factors

Poverty is a triggering factor for debt problems incurred by the parents of the daughter, leading to the daughter being used as "payment" to repay the debt to the husband through forced marriage. This poverty also fuels the desire of parents to obtain substantial financial gain by marrying their daughters to men from noble families who desire the child without their consent.

c. Social Status Factor

A woman's family sometimes willingly married off their daughter to a man from a noble family because society considered her to have a higher social status, as the captured woman was fought over in a manner considered valiant and honorable (Zandri & Kustantinah, 2025).

3. Community Perceptions of Legitimacy and Honor

In Sumbanese traditional society, family legitimacy and honor are often linked to how "fair" a customary practice, such as *kawin tangkap*, is in accordance with customary rules that are considered valid and passed down through generations. In the practice of *kawin tangkap*, a man collaborates with his relatives to capture or bring the woman he wishes to marry to the man's family home. Afterward, negotiations are held between the two families to discuss the dowry (belis) and the continuation of the customary process leading to the marriage. According to the Sumbanese, this tradition is seen as a form of respect for a man's tenacity, courage, and strong determination in proposing to his ideal woman. It is also seen as a symbol of strong family relationships and a cultural practice that strengthens the community (Zandri & Kustantinah, 2025).

4. Disharmony between Positive Law as a Value System and Law as a Social Phenomenon in the Practice of Kawin Tangkap

The practice of *kawin tangkap*, which involves elements of coercion, clearly contradicts basic human rights principles, particularly the individual's right to freely choose a life partner and the right to security and dignity as a human being. Under positive law, the free and informed consent of both parties is an absolute requirement for a valid marriage. The practice of *kawin tangkap* in Sumba also contradicts the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was ratified in Law Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women, and the Universal Declaration of Human Rights, which is a document in Indonesia, namely the Universal Declaration of Human Rights (UDHR), and was used as a reference in the drafting of Law Number 39 of 1999 concerning Human Rights. Both instruments affirm that marriage without the consent of the woman is a serious violation of human rights and a form of gender-based violence. In addition, this practice contains elements of structural discrimination against women.

In the social system of the Sumbanese indigenous community, a woman is often considered a cultural object and symbol of honor that can be "taken" without the right to refuse, while the man has full control over marriage decisions. From the perspective of Indonesian positive law, this form of marriage violates the material requirements of marriage as stipulated in Article 6 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which states that "marriage must be based on the consent of both prospective bride and groom." Therefore, if one party, in this case the woman, does not give free consent, the marriage is legally invalid and does not meet the legal requirements required by the state.

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The practice of *kawin tangkap* also contains an element of coercion, which fulfills the elements stipulated in the TPKS Law. Article 4 paragraph (1) and Article 10 emphasize that forcing a woman into marriage without the victim's consent falls under the category of sexual violence, which is subject to criminal sanctions for both the perpetrator and any parties involved in its planning and implementation. This can be considered a crime under positive law, even if the perpetrator attempts to justify it using customary or cultural grounds. Therefore, the practice of *kawin tangkap* not only violates international human rights standards, but also contradicts the Indonesian constitution (Ery Kurnia & Albar Aliyyus, 2025).

This demonstrates disharmony, a lack of alignment between positive law and law as a social reality (Surya & Wahab, 2023). Normative tension arises when positive law demands the abolition of traditions deemed to violate human rights, while indigenous legal systems consider the practice of *kawin tangkap* to be a cultural tradition. Thus, a debate arises between "social reality and the ideals of positive law." The tension between positive law stems from different sources of values: positive law derives from the idea of objective justice, while customary law derives from consensus and cultural meaning. Furthermore, the same act is viewed in contrast: what is considered a "criminal act" in positive law is viewed as a "rite of honor" in the legal system, a social phenomenon in the practice of *kawin tangkap*.

5. Analysis of the Harmonization of Positive Law and Law as a Social Phenomenon from a Theoretical Perspective

a. Living Law Theory (Eugen Ehrlich)

Eugen Ehrlich was an Austrian legal expert and sociologist. He proposed a theory on law called living law. This theory advocates a legal approach that aligns law with the lives of society, meaning that law is not merely written down in regulations, but rather is "living law" in accordance with the values that develop within societal customs. Ehrlich's theory is generally very useful as an aid to understanding law. However, it is worth reconsidering its weakness, namely the difficulty in determining the criteria used to determine whether a legal principle is truly living law and has a positive impact on society.

The theory of living law is strongly relevant to the customary practice of *kawin tangkap* in Southwest Sumba. This theory helps answer the question of why communities continue to consider *kawin tangkap* a legitimate tradition, as it is rooted in symbolic value and social legitimacy (Siregar, 2025). The persistence of tradition demonstrates that social legitimacy is often stronger than formal legal legitimacy, especially in communities that still view it as part of "living law" (Apriani & Hanafiah, 2022). However, this theory leaves a weakness related to the practice of *kawin tangkap* in determining whether the legal system of indigenous communities can have a positive impact on society or not, as this practice has been considered a violation of laws such as the TPKS Law, the Human Rights Law, and the Marriage Law, which indicate a negative impact of the *kawin tangkap* tradition.

Analysis based on Ehrlich's theory allows the author to understand that law cannot be separated from the social context while still observing the impact of the tradition, which is referred to as "living law" in Sumba society.

b. Progressive Legal Theory (Prof. Satjipto Rahardjo)

Prof. Satjipto describes law as a science that is constantly undergoing development, "Law as a process, law in the making," meaning that legal science is always developing and changing with the times and based on the needs of society. Progressive legal theory emphasizes that law exists to serve humanity, not the other way around (Septiningsih, 2024). Progressive law has indeed developed significantly since Satjipto Rahardjo initiated it. This idea was initially based on concern over the low contribution of legal science in Indonesia to enlighten the nation out of crises, including the legal crisis.

Harmonizing the law regarding the practice of *kawin tangkap* is essentially an effort to align two legal systems: positive law, which upholds the protection of human rights, and customary law, which is alive and respected as part of society's social identity. This harmonization process aligns with progressive legal theory, which asserts that law should serve humanity, not force humans to rigidly submit to the law (Laili & Fadhila, n.d.). Through this theory, law is seen as a science that continues to develop and is able to dialogue with the social realities of society.

In progressive legal theory, legal harmonization is achieved through three main approaches:

- 1) Aligning positive law with customary law through the establishment of Regional Regulations that explicitly eliminate the negative impacts of the practice of *kawin tangkap* and direct customary law to have a positive impact by prioritizing the protection of women and justice in the implementation of customary marriages. This approach reflects the progressive legal idea that law must be adaptive and able to innovate when existing legal texts do not reflect substantive justice.
- 2) Efforts to change the public mindset through education regarding how traditions should be managed so as not to harm fellow citizens, through dialogue between traditional leaders, churches, local governments, and women's and children's advocacy organizations. This approach demonstrates the idea of progressive law because it prioritizes the transformation of legal awareness over the mere rigid implementation of positive law. Prof. Satjipto always emphasized that effective law is not merely law enforced by the authorities, but law that exists as a collective consciousness of society. Thus, culture can still be respected, but cultural elements that violate women's dignity must be changed through humanistic customary mechanisms.
- 3) Law enforcement officers are required to understand the context of the tradition of *kawin tangkap* in Sumba without sacrificing the provisions of positive law. At this stage, officers must not be indifferent to existing traditions because they must prioritize

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substantive just law enforcement such as protecting female victims, encouraging non-discriminatory customary mediation, and ensuring that perpetrators are still processed according to the TPKS Law, the Criminal Code, the Marriage Law, and the Human Rights Law. This approach clearly reflects Prof. Sarjipto's idea that law enforcement is a creative process, not a mechanical one; the law must be used visionarily to fight for humanity.

Through these three forms of harmonization efforts, it is clear that progressive legal theory is not only relevant in restructuring the relationship between laws. The harmonization undertaken goes beyond simply aligning legal texts, but also builds a legal system that works for humanity, respects culture, and still upholds the dignity and rights of women as fundamental values in a state governed by the rule of law.

c. The Theory of "Law as a Tool of Social Engineering" (Roscoe Pound)

The theory of "law as a tool of social engineering," also known as the concept of law as a tool of social engineering, was first proposed by Roscoe Pound using a sociological jurisprudence approach. Pound emphasized that law must be able to adapt to societal dynamics and play a role in maintaining the balance of various social interests. According to Pound, law enforcement cannot be carried out solely textually or formally; law must also correct and reorganize imbalanced social structures (Triana et al., 2024). Thus, the ideal law is one that can create social order and harmony through a process of change that is designed and implemented gradually. Roscoe Pound's concept of law as a tool of social engineering positions law as a means to change and improve unequal social conditions. In the context of *kawin tangkap* in Southwest Sumba, this customary practice often violates women's rights and creates inequality, necessitating legal intervention that balances the interests of indigenous communities with the protection of human rights.

Legal harmonization in this case is a direct application of Pound's idea that positive law should not be rigidly enforced but rather used to reform harmful social practices. Through normative harmonization, local governments can draft regulations prohibiting *kawin tangkap* while also involving traditional leaders. Cultural harmonization serves to gradually shift societal perspectives, in line with Pound's concept of gradual social change. Harmonized law enforcement ensures that authorities understand the cultural context while still prioritizing women's protection.

6. Efforts to Harmonize Positive Law as a Value System with Law as a Social Reality in the Practice of Kawin Tangkap in Southwest Sumba

Legal harmonization in this context is the process of aligning two legal systems: positive law and customary law, as the legal framework of indigenous communities in Southwest Sumba (Ramadhan et al., 2024). Within the context of positive law, the practice of *kawin tangkap* has been categorized as a crime against women, regulated by several legal provisions, such as Law Number 1 of 1974 concerning Marriage and its amendments, which requires the consent of both prospective brides and grooms for a marriage to be valid. Furthermore, the Human Rights Law guarantees the right of every person to be free from all forms of coercion, including coercion in marriage. The TPKS Law criminalizes all forms of violence, including forced marriage.

Therefore, although *kawin tangkap* is part of the tradition of the Sumbanese indigenous people, the state remains obliged to ensure that its implementation does not conflict with the basic principles of positive law, this is in line with the three theories used, such as the "living law" theory proposed by Eugen Ehrlich, the progressive legal theory which is the idea of Prof. Satjipto Rahardjo, and the "Law is a tool of social engineering" theory proposed by Roscoe Pound. To achieve harmony between the two legal systems, efforts are needed that will be used as a reference for harmonization, namely:

- a. Formal legal recognition of customary aspects (Sari, 2025), such as the practice of *kawin tangkap*, which is a tradition in the Southwest Sumba community, is very important to maintain the existence and identity of indigenous communities. This recognition is realized through the formation of Regional Regulations and/or Village Regulations, which recognize customary practices as long as they do not conflict with the basic principles of national law, for example, making regulations related to customary marriages that have a positive impact with sacred cultural meaning in the customary marriage process. These harmonization efforts are in line with the theory put forward by Roscoe Pound, that law is a tool of social engineering, meaning that good law is law that is able to bring order and harmony in society through social change by gradually restructuring legal norms.
- b. Participation in the form of dialogue between customary actors, the community, and the local government forms the basis of the harmonization process. Dialogue provides a space where local cultural values can be openly communicated in line with national legal principles. Such forums allow for the exchange of views between customary leaders, religious leaders, local government officials, women's organizations, and law enforcement agencies (Praditha & Artajaya, 2024). Through this participation, the public can understand why certain practices, such as *kawin tangkap*, are considered violations of positive law, while the state can also learn to respect the social structures and philosophies underlying these practices. A concrete effort to harmonize the law was carried out with the signing of an MoU by the Minister of Women's Empowerment and Child Protection (Meneg PPPA) with four regents in June 2022. The MoU signing took place during a dialogue between the Minister of PPPA and the local government, as well as community leaders, customary leaders, and women's organizations. Thus, public participation can

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demonstrate that outside of regional representative institutions through the legislative process, there are other perspectives that must not be overlooked in the process of formulating regional regulations.

- c. Strengthening public legal awareness is key to successful harmonization. Many conflicts between customary traditions and positive law arise from low public legal awareness, which affects public obedience to positive law. Therefore, education, legal counseling, and outreach are necessary, involving traditional leaders, social institutions, local governments, and law enforcement officials (Palilingan et al., 2024). or example, implementing human rights and marriage law education programs in schools and communities, explaining the right to consent, the minimum age of consent, the rights of children and women, and the legal consequences of violations. The goal is for the community, especially women and children, to understand that custom cannot be used as a justification for human rights violations and to understand their rights under positive law, thereby enabling them to reject harmful practices.

Thus, harmonization between positive law and customary law is not only a normative effort, but also a dynamic and ongoing social process. The state and indigenous communities must complement each other; state law must be more sensitive to local values, while indigenous communities must be open to legal principles. This harmonization effort is expected to prevent harmful customary practices without eradicating local cultures that hold noble values.

CONCLUSIONS

Based on the discussion above, it can be concluded that

1. Concrete cases of the customary practice of *kawin tangkap* occurred in 2020, 2021, and 2023. The concrete case of the customary practice of *kawin tangkap* in 2020 began with the kidnapping of a woman with the initials R in Sumba in June 2020 by a group of men for the purpose of *kawin tangkap*. The victim's family rejected the customary proposal and filed a police report. However, the case was dropped after customary resolution and the report was withdrawn, while the victim was still not immediately returned. The next concrete case of the customary practice of *kawin tangkap* in 2021 occurred in March 2021. A case of *kawin tangkap* occurred in which three perpetrators with the initials K, P, and DB, along with four others, kidnapped a woman for forced marriage. The victim was dragged, held by force, then lifted into a car and taken to the home of one of the perpetrators, under close surveillance despite her pleas to be sent home. The victim's family reported the case to the police, and the victim was rescued. The autopsy revealed minor injuries to the victim's body. At the end of the legal process, two perpetrators were sentenced to three years in prison and one other to three years and six months, and a concrete case of the customary practice of *kawin tangkap* in 2023 occurred on September 7, 2023 in Waimangura, Southwest Sumba, a woman with the initials DM was arrested and forcibly taken by around 20 perpetrators to *kawin tangkap*. The action was recorded and went viral on social media. The police named the four perpetrators as suspects and detained them, with charges of Article 328, Article 333 in conjunction with Article 55 of the Criminal Code, and Article 10 of the TPKS Law.
2. The factors that encourage the practice of *kawin tangkap* consist of legal and non-legal factors. Legal factors trigger the practice of *kawin tangkap* due to gaps or weaknesses in the legal substance, the lack of role and response of law enforcement within the legal structure, and a societal legal culture that still places customary traditions above state law, next are Non-legal factors include patriarchal culture, which places women in a subordinate position to men and men as the holders of authority, economic factors, related to poverty and family debt, which then make women a tool for transactions and to obtain property from men; and social status factors, where families and communities still interpret the practice of *kawin tangkap* as a symbol of honor, courage, and increased social status. These factors contribute to the continued practice of *kawin tangkap*, even though it is in fact contrary to positive law.
3. Efforts to harmonize positive law with law as a social phenomenon in the practice of *kawin tangkap* are carried out through, legal-normative recognition, by forming regulations, both Regional Regulations and Village Regulations, which regulate the practice of *kawin tangkap* so that is continue to respect the positive values of tradition, but eliminate negative elements such as coercion and violence, Participation in the form of dialogue between customary actors, the community, and local governments, to achieve the desired goals. This effort is in line with the theory of living law, progressive law, and law as social engineering which places law as a means to organize social practices so that they continue to respect customary values while protecting the rights and dignity of women.

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REFERENCES

- 1) Afdhali, D. R., & Syahuri, T. (2023). IDEALITAS PENEGAKKAN HUKUM DITINJAU DARI PERSPEKTIF TEORI TUJUAN HUKUM. *Collegium Studiosum Journal*, 6(2), 555–561. <https://doi.org/10.56301/cs.j.v6i2.1078>
- 2) Ambarsari, R., Zakaria, F. A., & Jaranau, E. (2025). Sengketa Adat terhadap Kawin Tangkap di Sumba Barat: Perlindungan Hukum Terhadap Perempuan Dalam Perspektif Hukum Adat. *Nomos : Jurnal Penelitian Ilmu Hukum*, 5(3). <https://doi.org/10.56393/nomos.v5i3.3009>
- 3) Apriani, N., & Hanafiah, N. S. (2022). Telaah Eksistensi Hukum Adat pada Hukum Positif Indonesia dalam Perspektif Aliran Sociological Jurisprudence. *Jurnal Hukum Lex Generalis*, 3(3), 231–246. <https://doi.org/10.56370/jhlg.v3i3.226>
- 4) Aulia, M. Z. (2018). Hukum Progresif dari Satjipto Rahardjo: Riwayat, Urgensi, dan Relevansi. *Undang: Jurnal Hukum*, 1(1), 159–185. <https://doi.org/10.22437/ujh.1.1.159-185>
- 5) Djaga Mesa, G., & Putra Frans, M. (2024). Konflik Antara Hukum Adat dan Hukum Nasional: Kasus Kawin Tangkap di Sumba. 6(3). <https://doi.org/10.31933/unesrev>
- 6) Doko, E. W., Suwitra, I. M., & Sudibya, D. gayatry. (2021). Tradisi Kawin Tangkap (Piti Rambang) Suku Sumba di Nusa Tenggara Timur. *Jurnal Konstruksi Hukum*, 2(3), 656–660. <https://doi.org/10.22225/jkh.2.3.3674.656-660>
- 7) Ery Kurnia, & Albar Aliyyus. (2025). Budaya Perkawinan dalam Bentuk Pemaksaan Perkawinan Vs Tindak Pidana dalam Lingkup Perkawinan Menurut Perspektif Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual. *Referendum : Jurnal Hukum Perdata Dan Pidana*, 2(1), 51–65. <https://doi.org/10.62383/referendum.v2i1.518>
- 8) Gojali, D., & Fauzi Nazar, R. (2022). Pengaruh Aliran Sociological Jurisprudence Terhadap Pembangunan Sistem Hukum di Indonesia. *Jurnal Hukum Islam Dan Pranata Sosial Islam*, 10(2). <https://doi.org/10.30868/am.v10i02.3184>
- 9) Hidayat, S., Hendrawan, Herman, Haris, O. K., Tatawu, G., & Maindi Rekafit. (2023). Kebijakan Hukum Pidana Pemaksaan Perkawinan yang Baru Diketahui Setelah Perkawinan Terjadi. *Halu Oleo Legal Research*, 5(2), 561–575. <http://jurnal.unpad.ac.id/share/article/view/13820>
- 10) Joti, R. (2025). BUDAYA KAWIN TANGKAP DALAM PERSPEKTIF GENDER DAN HAK ASASI MANUSIA. *Jurnal Media Akademik*, 3(9), 3031–5220. <https://doi.org/10.62281>
- 11) Kaimuddin Haris, O., Hidayat, S., & Nurrohman Muntalib, D. (2023). Adat Kawin Tangkap (Perkawinan Paksa) sebagai Tindak Pidana Kekerasan Seksual. In *Halu Oleo Legal Research* | (Vol. 5, Issue 1). <https://www.antaranews.com/>
- 12) Komnas Perempuan. (2024). Laporan Pemantauan Kawin Tangkap di Sumba.
- 13) Laili, A., & Fadhila, A. R. (n.d.). TEORI HUKUM PROGRESIF (Prof. Dr. Satjipto Rahardjo, S.H.). *Jurnal Sinda*.
- 14) Maharany, R., & Ferry Rosando, A. (2025). Pelaku Kawin Tangkap Dapat di Pidana Berdasarkan Undang-Undang Tindak Pidana Perdagangan Orang. 2(5), 384–388. <https://doi.org/10.5281/zenodo.15328394>
- 15) Marzuki, P. M. (2017). *Penelitian Hukum* (13th ed.). Kencana.
- 16) Palilingan, T. N., Setiabudhi, D. O., & Palilingan, T. K. R. (2024). Peningkatan Kesadaran Hukum Masyarakat Dalam Mencegah Konflik Sosial Pelaksanaan Pemilihan Kepala Daerah. *Lex Administratum*, 12(5).
- 17) Praditha, D. G. E., & Artajaya, I. W. E. (2024). *Buku Referensi Hukum Adat Bali: Denyut Nadi Dalam Gempuran Globalisasi* (1st ed.). Media Penerbit Indonesia.
- 18) Purnomo, F. A., Sunarto, & Sulistyani, H. D. (2024). RESISTENSI PEREMPUAN TERHADAP TRADISI KAWIN TANGKAP MASYARAKAT ADAT SUMBA (Analisis Narasi William Labov dalam Buku Perempuan yang menangis kepada bulan hitam karya dian purnomo). *Interaksi Sosial*, 12(4).
- 19) Rafif, M., & Adhiyati, Z. (2023). TINJAUAN PENERAPAN E-COURT DI PENGADILAN NEGERI YOGYAKARTA BERDASARKAN TEORI HUKUM LAWRENCE M. FRIEDMAN. *Verstek*, 11(4).
- 20) Ramadhan, R., Syafrizal, S., & Oktapani, S. (2024). HARMONISASI HUKUM ADAT DAN KONSTITUSI NASIONAL: Studi Konflik Pengelolaan Sumber Daya Alam di Indonesia. *Nusantara; Journal for Southeast Asian Islamic Studies*, 20(2), 92. <https://doi.org/10.24014/nusantara.v20i2.33987>
- 21) Sari, O. (2025). Harmonisasi Hukum Adat dan Hukum Modern. Biro Publikasi, *Jurnal Ilmiah Dan Informasi Digital*.
- 22) Septiningsih, I. (2024). The Relevance of Progressive Law to Legal Reasoning in Indonesia. 1(2). <https://doi.org/10.5281/zenodo.12316664>
- 23) Surya, I., & Wahab, A. (2023). HARMONISASI PERATURAN PERUNDANG UNDANGAN DALAM MEWUJUDKAN PEMERINTAHAN YANG BAIK HARMONIZATION OF LEGAL REGULATIONS IN REALIZING GOOD GOVERNMENT. *Jurnal Kompilasi Hukum*, 8(2). <https://doi.org/10.29303/jkh.v8i2.142>
- 24) Toriq, A. R. (2023). Analisis Yuridis Tradisi Pemaksaan Perkawinan Berdasarkan Perspektif Hak Asasi Manusia (Studi Kasus Kawin Tangkap di Suku Sumba Nusa Tenggara Timur). *Gema Keadilan*, 10(3), 138–152. <https://doi.org/10.14710/gk.2023.20493>
- 25) Triana, Y., Hartono, W., Setiawan, J., & Muhandi, D. (2024). KEADILAN SOSIAL MELALUI PENEMUAN HUKUM

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DI INDONESIA. *Journal of Social Science and Education Research*, 1(4).

- 26) Utama, I. M. W. M. T. (2024). ANALISIS KAWIN TANGKAP SUMBA DITINJAU DARI PERSPEKTIF HAK ASASI MANUSIA DAN HUKUM NASIONAL. *Yustisi*, 11(3). <https://www.detik.com/bali/nusra/d-6925171/sopan-catat-20-kasus-kawin-tangkap-di-ntt-pada-2013->
- 27) Wiwin, Auliah Ambarwati, Johamran Pransisto, Irwan Surya Darmawan, & Irwan. (2025). Praktik Kawin Tangkap (Piti Rambang): Konflik Hukum Adat dengan Hukum Perkawinan Nasional dan Hukum Islam. *QISTHOSIA : Jurnal Syariah Dan Hukum*, 6(1), 01–11. <https://doi.org/10.46870/jhki.v6i1.1469>
- 28) Zandri, H. Z., & Kustantinah, I. (2025). Hukum Adat sebagai Instrumen Kontrol Sosial atas Perempuan: Studi Kasus Kawin Tangkap di Sumba. *Arus Jurnal Sosial Dan Humaniora*, 5(2), 1556–1564. <https://doi.org/10.57250/ajsh.v5i2.1324>