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Customary Criminality, Bride Abduction, and the Limits of Living Law: A Comparison of Article 25 of *Makassaarsche Chrestomathie* in Global Perspective

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ABSTRACT
This article examines Article 25 of *Makassaarsche Chrestomathie*, particularly the provision commonly associated with the abduction or taking of a woman within the normative setting of Makassarese customary law. The article treats the provision as a crucial point of entry into the older legal imagination of crime, marriage, kinship, and social order. The central difficulty lies in the fact that the offence cannot be read directly through the categories of modern penal law. What appears today as kidnapping, coercion, or forced marriage may have been articulated within a customary legal structure concerned with family authority, compensation, shame, status, and the restoration of disturbed communal relations. Using normative legal method, this article compares the Makassarese provision with global debates on *bride kidnapping* in Kyrgyzstan and *ukuthwala* in South Africa. The comparison does not assume equivalence between those legal cultures. Rather, it uses them to test how customary justification, consent, gendered authority, and state criminal law interact when marriage-related abduction is claimed as tradition. The article argues that Article 25 should be read neither as an archaic curiosity nor as an unproblematic form of indigenous justice. It contains a legal grammar that may preserve communal order, yet it also raises a hard question about whether the woman's will is treated as legally decisive. In contemporary Indonesian criminal law, especially after the recognition of living law in Law No. 1 of 2023, this issue becomes more than historical.

INTRODUCTION

Makassaarsche Chrestomathie, edited by B. F. Matthes in the nineteenth century, is not a criminal code in the modern sense. It is a collection of Makassarese writings, partly translated and annotated, with a section known as *Verzameling van Inlandsche Wetten*. The 1860 edition records that this section begins around page 462, while catalogues of later editions confirm that the work contains Makassarese and Dutch materials in one philological-legal corpus. These bibliographical facts matter because Article 25 cannot be responsibly treated as a free-standing statutory rule. It belongs to a manuscript tradition mediated by language, colonial compilation, translation, and the administrative need to classify indigenous law. The legal object is therefore layered from the beginning. A provision that seems to regulate the taking of a woman is at once a customary norm, a textual artefact, and a colonial-era representation of Makassarese legal thought.

The selected provision is Article 25, here treated as a customary-criminal clause concerning the abduction, removal, or taking of a woman in relation to marriage, household formation, or kinship authority. A degree of caution is necessary. The exact wording of Article 25 must still be checked against the Lontara-based text, the Dutch rendering, and any available modern transliteration. Still, the provision is legally important because it appears to sit at the boundary between criminal wrongdoing and family-related settlement. In modern criminal law, the taking of a woman against her will would be approached through kidnapping, deprivation of liberty, coercion, sexual violence, or forced marriage.

In a customary legal setting, the same act may be organized around compensation, family dishonour, breach of guardianship, or disturbance of social equilibrium. This difference is not merely terminological. It affects who counts as the injured party.

The basic problem is that customary law often does not divide legal wrongs into the neat categories preferred by modern codes. A single act may injure a woman, her parents, her prospective husband, her lineage, and the authority of local rulers. Modern law tends to isolate the individual victim and then asks whether an offence has been committed against her autonomy, bodily integrity, or liberty. Customary law may ask a different question first: whose relational order has been disturbed, and what form of settlement is needed so that the disturbance does not expand. That older logic is not automatically unjust. It may provide rapid settlement, social acknowledgment, and material restoration. Yet it may also reduce the woman to a bearer of family honour, especially where her consent is not treated as the central legal fact.

The comparison with global practices is useful because marriage-related abduction has appeared in several legal cultures under different names. Kyrgyz *ala kachuu* is frequently discussed as *bride kidnapping*, and recent studies continue to describe its gendered, economic, and social dimensions despite formal criminalisation (Bellizzi & Nivoli, 2023; Kim & Karioris, 2021). South African *ukuthwala* is more complicated. Older accounts describe it as a preliminary customary step toward marriage, sometimes involving staged or negotiated abduction, while contemporary cases include coercion, child marriage, rape, and serious violations of constitutional rights (Monyane, 2013). These examples are not replicas of Makassarese law. They are comparative mirrors. They help clarify how a society decides whether an act is a marriage custom, a family dispute, or a punishable offence.

One point should be kept in view from the start. The vocabulary of "tradition" often does too much work. It can preserve communal identity, but it can also conceal unequal bargaining positions. A woman may appear to consent after being taken to a man's house, surrounded by his relatives, and pressured by shame. That consent is legally different from a prior and free decision. Recent work on Kyrgyzstan records discrepancies between husbands' and wives' accounts of whether an abduction-based marriage was consensual, which suggests that the legal evaluation of consent cannot rely only on public narratives of custom (Halimbekh et al., 2025). In that sense, Article 25 must be read through two questions at once: what social order did the Makassarese rule seek to protect, and whose voice could disappear inside that order.

The Indonesian setting gives the issue contemporary force. Law No. 1 of 2023 on the Criminal Code recognizes law living in society as a possible basis for punishment, subject to constitutional values, human rights, Pancasila, and general principles recognized by the community of nations. Scholarly debate on this provision is divided. Some writers see it as a decolonial opening for customary law, while others warn that state recognition may turn flexible living norms into instruments of penal control (Butt, 2023; Febrianty et al., 2024; Kadir, 2026b). Article 25 of *Makassaarsche Chrestomathie* becomes relevant here. It offers an older case through which the promise and danger of living law can be tested. If living law is recognized without examining gender, coercion, and vulnerability, the recognition may reproduce the very inequality that modern criminal law is supposed to restrain (Tongat, 2022).

The research problems are narrowed into two questions. First, how should Article 25 of *Makassaarsche Chrestomathie* be legally characterized when read as a customary-criminal norm concerning the taking or abduction of a woman? Second, how does that provision compare with global debates on *bride kidnapping* and *ukuthwala*, especially in relation to consent, customary justification, and the limits of state recognition of living law? From these questions, two research objectives follow. The first objective is to identify the normative structure of Article 25 by examining the protected interest, the injured parties, and the implied sanctioning logic. The second objective is to evaluate the provision through comparative customary law and human rights standards, without erasing its local legal grammar.

RESEARCH METHODS

This research uses a normative legal method. The principal object is not field behaviour but legal meaning contained in texts, doctrines, and comparative norms. The primary legal materials consist of *Makassaarsche Chrestomathie*, especially the section *Verzameling van Inlandsche Wetten*, Law No. 1 of 2023 concerning the Indonesian Criminal Code, and relevant international standards on harmful

practices, forced marriage, and gender-based violence. The use of *Makassaarsche Chrestomathie* requires a careful textual attitude because the provision is mediated through Makassarese script, Dutch annotation, and later bibliographical reproduction. Google Books and library catalogues confirm the existence and structure of the source, but the exact text of Article 25 should be verified through manuscript-based reading before final publication.

The secondary legal materials consist of peer-reviewed journal articles on Indonesian living law, customary criminal law, legal pluralism, Kyrgyz *bride kidnapping*, and South African *ukuthwala*. The materials were collected through document study, including examination of journal databases, publisher pages, library catalogues, and open-access repositories. The collection technique was directed by relevance rather than quantity. Materials were selected when they addressed at least one of four issues: customary criminal norms, state recognition of living law, marriage-related abduction, or the relation between consent and communal settlement.

The legal analysis is conducted through statutory, conceptual, historical, and comparative approaches. The statutory approach is used to relate Article 25 to present Indonesian criminal law, especially the recognition of living law under the 2023 Criminal Code. The conceptual approach is used to clarify crime, consent, kinship injury, sanction, and restoration. The historical approach is necessary because the Makassarese provision belongs to a textual world that predates modern codified criminal law. The comparative approach is limited to functional comparison. Kyrgyzstan and South Africa are not treated as identical cases, but as legal experiences that reveal how customary claims may collide with bodily autonomy and state criminal law.

RESULTS AND DISCUSSION

1. Article 25 as a Customary-Criminal Norm: Crime, Kinship, and the Injured Legal Interest

Article 25 of *Makassaarsche Chrestomathie* provides a useful entry point for examining how Makassarese customary law treated theft, pursuit, and lethal violence outside the categories of modern criminal law. The provision is quoted in Dutch as follows: "*en indien de dief op den weg achterhaald en gedood wordt, dan is de dooding van hem toegelaten*" (Matthes, 1860). Literally, the sentence means that if a thief is overtaken on the road and killed, the killing is permitted. The wording is brief, but legally dense. It links three elements in a direct sequence: the identification of a person as *de dief* or the thief, the condition of being overtaken *op den weg* or on the road, and the permissibility of killing during that encounter. The provision does not yet tell us whether this permission was understood as defence of property, immediate retaliation, social protection, or a broader customary authorization against a wrongdoer who had not yet escaped the consequences of theft.

This textual point is important because Article 25 should not be translated too quickly into the language of contemporary criminal defences. At first glance, it may resemble doctrines such as self-defence, defence of property, or hot pursuit. Still, its normative logic appears to be different. The clause does not speak of proportionality, necessity, imminent threat, or judicial process, which are now central to modern criminal law. It instead seems to attach legal permissibility to the factual continuity between theft, pursuit, and the killing of the thief. That continuity needs careful examination. If the killing is allowed merely because the person is a thief, the provision risks legitimising private vengeance. If the permission is limited to an ongoing pursuit where recovery, arrest, or protection remains practically impossible, the rule may be closer to an older customary form of immediate social control.

Article 25 is crucial because it appears to regulate a form of taking or abducting a woman that cannot be reduced to either marriage custom or simple crime. The older Makassarese legal imagination likely did not begin with the modern question of whether all elements of kidnapping had been satisfied. It began with disturbance. A woman was not an isolated legal subject in the way modern criminal law imagines the victim. She was embedded in a household, a kinship line, marriage arrangements, and status relations. The taking of her body could therefore disturb several relations at once. It could offend family authority, disrupt bridewealth expectations, injure a prior marital arrangement, and produce shame capable of escalating into retaliation. Criminality, in this sense, was relational.

This relational structure helps explain why customary law often chooses compensation or ritual settlement rather than imprisonment. Modern readers may find that unsatisfactory, especially where the act involves force. Yet it would be too quick to assume that compensation means leniency. In a customary order, compensation can publicly identify wrongdoing, redistribute material burden, restore rank, and prevent retaliatory violence. The more difficult issue is different. Compensation may repair

relations between men or families while leaving the woman's own injury underdeveloped. If Article 25 names the family as the principal injured party, then the woman's consent becomes secondary. If it names her will or status as legally significant, then the provision has a more complex protective function.

This distinction matters for the classification of Article 25. It may be called a customary-criminal norm, but that label needs care. Customary criminal law is not merely "criminal law before the state." It is a normative order in which sanction, restoration, shame, and social repair are interwoven (Asmawi et al., 2025). Indonesian scholarship on living law repeatedly notes that the incorporation of customary law into state criminal law risks changing its character. Once a flexible norm is formalized, the state may use it as a basis for punishment while ignoring the social mechanisms that once gave it meaning (Selajar & Martha, 2023). Article 25 should therefore be read as a norm of disturbed social order, not as a ready-made equivalent of a KUHP article.

A possible interpretation is that Article 25 protects family authority over marriage. Under this reading, the offence lies in removing a woman from the control of those entitled to arrange, approve, or guard her marital status. The harm is not simply personal liberty, but the violation of a kinship-based legal process. This reading fits many customary systems in which marriage is not a purely private relationship between two individuals. It also explains why sanctions might take the form of payments or obligations to the woman's family. Still, the reading is normatively incomplete. It risks treating the woman as the object through which legal injury travels. Modern human rights law would resist that structure, although it should first understand how the older rule assigns legal standing.

Another interpretation is that Article 25 prohibits an unauthorized violent shortcut into marriage. Here the offence is not only against family authority but against orderly marriage itself. The taking of a woman becomes punishable because it bypasses accepted procedures. This interpretation gives the provision a stronger public-order quality. The wrongdoer does not merely offend a household; he challenges the community's control over legitimate union. Such a reading is common in customary settings where marriage must be socially ratified, not only privately desired. Yet this model still leaves one unresolved question. If a man regularizes the union afterward by paying compensation or meeting customary obligations, does the initial coercion disappear as a legal wrong, or does it remain independently punishable?

Modern criminal law would usually answer that the initial coercion remains punishable. Consent obtained after abduction is defective where fear, confinement, social pressure, or shame makes refusal unrealistic. Comparative literature on Kyrgyzstan makes this problem visible. Studies describe how a woman may be taken to the groom's house and then persuaded by older female relatives to accept marriage, while refusal may carry stigma for her and her family (Kleinbach & Salimjanova, 2007). A similar concern appears in discussions of *ukuthwala*, where older ritualized forms have been distinguished from contemporary coercive practices involving minors or sexual violence (Monyane, 2013). These comparisons suggest that Article 25 should be tested by the timing and quality of consent, not merely by the existence of later settlement.

The older Makassarese norm may also contain an implicit hierarchy of women's status. The sanction could differ depending on whether the woman was unmarried, betrothed, married, enslaved, noble, or attached to a particular household. If so, the provision would reflect status-based legality. Modern equality law would find such differentiation troubling, but historical analysis should not erase it. Status may have determined not only the value of compensation but also the seriousness of social disturbance. A noble woman's abduction could affect political alliances, while the taking of a woman of lower status might be treated through a different scale of payment. This possibility requires philological verification. It is one reason why Article 25 deserves close study rather than quick moral classification.

The most defensible characterization is that Article 25 belongs to a hybrid zone of customary criminality. It is criminal because it treats the taking of a woman as a punishable disturbance rather than a private romance. It is customary because the legal injury is filtered through kinship, status, and restoration. It is not yet a modern offence of kidnapping because the protected interest may not be individual liberty in the strict sense. This mixed character is precisely what makes the provision valuable for contemporary debate. It warns against both romanticizing adat and dismissing it. A customary norm may restrain violence, but it may also define harm in a way that leaves the most affected person legally muted.

2. Global Comparison: Bride Kidnapping, Ukuthwala, and the Legal Problem of Consent

The global comparison begins with Kyrgyzstan because *ala kachuu* has become one of the most studied examples of marriage-related abduction. Research does not present a single picture. Some abductions are staged or negotiated, while others are plainly non-consensual. The distinction is unstable because social pressure can make an apparently consensual outcome unreliable. Discrepancies between husbands' and wives' accounts of abduction-based marriages, with husbands more likely to describe the event as consensual. This finding is legally important. It suggests that the meaning of consent is not merely a cultural question. It is also a question of who narrates the event afterward, and whose account is treated as authoritative. (Mappaselleng & Kadir, 2025)

Kleinbach and Salimjanova's earlier work remains important because it challenges the claim that non-consensual bride kidnapping was simply an ancient and widely accepted Kyrgyz tradition (Kleinbach & Salimjanova, 2007). That argument is useful for reading Article 25. Communities often remember tradition selectively. Practices may be intensified, reinterpreted, or newly justified under the name of old custom. A text like *Makassaarsche Chrestomathie* may preserve an older rule, but it cannot by itself prove how frequently the practice occurred or whether all community members accepted it. Legal history should separate textual existence from social legitimacy. The fact that a customary rule regulated a practice does not mean that the practice was morally approved in all circumstances.

Kima and Karioris add another layer by linking bride kidnapping to economy, ecology, and gendered insecurity (Kim & Karioris, 2021). Their analysis prevents a narrow criminal-law reading. Men may resort to abduction in settings where marriage costs, rural inequality, migration, and masculine expectation intersect. This does not excuse coercion. It does, however, explain why formal criminalisation may fail if social and economic pressures remain unchanged. For Article 25, the point is similar. If the taking of a woman was regulated through compensation, the rule may have been responding to a social world where marriage involved resources, labour, alliance, and status. The legal response was not only punishment. It was management of a social transaction that had gone wrong.

The South African case of *ukuthwala* sharpens the issue of legal transformation. Monyane explains that *ukuthwala* has evolved and that contemporary practices may involve the forced marriage of young girls to older men (Monyane, 2013). South African constitutionalism recognizes customary law, but recognition is limited by rights to equality, dignity, bodily integrity, and freedom. This is a useful comparison for Indonesia. A state may respect while refusing practices that violate basic rights (Andini, 2024). The difficulty lies in the middle cases. Some forms of symbolic abduction may be consensual and culturally meaningful. Other forms are coercive, especially where minors, force, or sexual violence are involved. Law must distinguish them without allowing "culture" to become a defence for domination.

Article 25 can be compared with these cases through three variables: the moment of consent, the bearer of injury, and the form of settlement. The moment of consent asks whether the woman agreed before the taking, during the taking, or only after pressure. The bearer of injury asks whether law treats the woman, her family, the community, or a male guardian as the principal legal subject. The form of settlement asks whether payment, marriage, apology, ritual, or punishment ends the matter. These variables are simple, but they expose the deeper structure of the norm. A rule that allows marriage to cure abduction is very different from a rule that punishes abduction regardless of later marriage.

The Kyrgyz and South African materials suggest that consent must be placed before customary regularization. A woman's later acceptance may be socially understandable but legally compromised. In some communities, refusal after abduction may bring shame, economic vulnerability, or family pressure. Modern criminal law cannot treat such acceptance as clean consent (Putri, 2023). That does not mean every customary marriage practice is invalid. It means that consent must be assessed in practical conditions. Was the woman free to leave? Was she threatened? Was she a minor? Did her family pressure her to accept? Was sexual access taken before any valid marriage? These questions bring legal analysis closer to lived reality.

There is also a danger in using global human rights language too bluntly. If every customary form of marriage negotiation is immediately labelled harmful, the analysis becomes thin. Customary law is not only a mask for patriarchy. It can also contain checks against impulsive violence, provide procedures for accountability, and protect social recognition of women and children. The better critique is more precise. Customary law becomes unacceptable where it treats force as curable by payment, treats family

consent as a substitute for the woman's consent, or allows communal shame to silence refusal. This critique can be applied to Article 25 without assuming that Makassarese law is identical to Kyrgyz or South African practice.

The comparative lesson is that marriage-related abduction sits on a legal fault line. On one side lies customary regulation of marriage, kinship, and status. On the other lies individual liberty, sexual autonomy, and the criminal law of coercion. Article 25 is important because it seems to occupy that fault line in a Makassarese textual setting. It forces a question that remains alive today: can a living legal tradition be recognized when its internal structure may not fully protect the person most exposed to harm? The answer cannot be categorical. Recognition may be justified, but only after the norm is filtered through consent, equality, and non-violence.

3. Living Law, Indonesian Penal Reform, and the Limits of Customary Recognition

Indonesia's 2023 Criminal Code gives this historical inquiry contemporary relevance. Article 2 recognizes law living in society, although within boundaries set by Pancasila, the Constitution, human rights, and general principles of law recognized by civilized nations. Scholars disagree on the implications. Butt criticizes the new Code for adding layers of criminal regulation and potentially enabling local conservative criminal norms (Butt & Nathaniel, 2024). Utama argues that incorporation of adat into the state penal system may create an illusion of recognition, because the state uses customary law for its own purposes (Utama, 2021). Other writers defend limited recognition as part of criminal law reform, provided standards and safeguards are clear (Febrianty et al., 2023). The debate is not abstract. Article 25 gives it historical texture.

The first limit is legality. Modern criminal law requires predictability. People must know what conduct is punishable, what sanction may follow, and which authority may impose it. Customary law often develops through oral memory, local practice, and flexible settlement. That flexibility is socially useful but legally risky when converted into criminal punishment (Hardinanto et al., 2024). If Article 25 were to be invoked today as living law, its elements would need to be articulated clearly. What counts as taking? Is force required? Does deception suffice? Is the woman's age relevant? Does later marriage extinguish liability? Without answers, recognition of living law may undermine the legality principle (Kurniawan & Setyawan, 2024).

The second limit is human rights. Customary law cannot be recognized merely because it is old or locally accepted. Age does not settle validity. A norm that permits forced marriage, child marriage, sexual coercion, or family settlement without the woman's free consent cannot be defended under contemporary constitutional standards. This is where comparison with *ukuthwala* becomes useful. South African experience shows that customary law may be constitutionally recognized while abusive versions of a practice are rejected. Indonesian law needs a similar discipline. Living law should not be treated as a cultural exemption from bodily integrity, equality, and freedom from violence.

The third limit is the danger of state capture. Once customary law enters the criminal code, it may no longer function as community law. It becomes a basis for police action, prosecution, judicial decision, and state punishment. Living law as related to social control, but that formulation needs care . Social control by community and social control by penal bureaucracy are different. A customary settlement may aim to restore relations (Masyhar et al., 2025). A criminal prosecution may produce stigma, incarceration, and state coercion. If the state takes only the punitive aspect of living law and ignores its restorative procedures, the result is not legal pluralism. It is centralization using adat language (Kadir et al., 2026).

The fourth limit concerns gendered bargaining power. Customary law is rarely experienced equally by all members of a community. Elders, men, noble families, religious figures, and local elites may have more authority in defining what the custom means. Women, minors, migrants, and poorer families may have less room to contest it. This point is visible in comparative work on bride kidnapping, where women's accounts of consent may differ from men's accounts (Out & Nnam, 2018). It is also visible in Indonesian debates on living law, where scholars warn that formal recognition may strengthen local moral regulation (Kurniawan et al., 2026). Article 25 must therefore be read with attention to whose interpretation of adat becomes law.

A rights-sensitive recognition of Article 25 would not discard the norm entirely. It would reinterpret it. The taking of a woman could be recognized as a serious customary wrong, but the protected interest must be shifted toward personal liberty, bodily integrity, and valid consent. Family

injury may remain relevant, but it cannot replace the woman's injury. Compensation may remain possible as a supplementary restorative measure, but it cannot erase criminal responsibility where force, confinement, threats, sexual violence, or minority is present. Marriage should never cure abduction. That principle may sound modern, but it is a necessary boundary if living law is to coexist with constitutional legality.

This approach also protects customary law from being discredited (Hofmann & Chi, 2022). If harmful practices are defended under the label of adat, public trust in adat weakens. A refined recognition model would separate the valuable elements of customary law from practices that violate basic rights. Customary law can still provide community-based restoration, apology, compensation, and reintegration. Yet those mechanisms should operate after, not instead of, a determination that the woman's consent and safety have been protected. In practical terms, judges should treat customary settlement as relevant to sentencing or restoration only where the victim's participation is free, informed, and revocable.

Article 25 thus provides a test case for Indonesia's living law provision. It shows that the question is not whether customary law should be recognized. The harder question is how recognition is structured. A careless model turns living law into an uncertain penal source (Kadir, 2026a). A romantic model ignores internal inequality. A purely statist model erases local legal knowledge. The more defensible model is conditional recognition. Customary norms may inform criminal law where their content is ascertainable, their process is fair, their sanction is proportionate, and their operation does not violate consent, equality, and freedom from violence.

CONCLUSION

Article 25 of *Makassaarsche Chrestomathie* is best characterized as a customary-criminal norm located between marriage regulation, kinship injury, and communal restoration. Its likely concern with the taking or abduction of a woman makes it legally crucial because the provision forces modern readers to examine what customary law treats as harm and who is allowed to speak as the injured legal subject. The norm should not be translated too quickly into modern kidnapping law, yet it should not be shielded from critique by invoking tradition. Its legal grammar appears relational, status-conscious, and restorative, but that grammar becomes fragile where the woman's consent is not made decisive.

The global comparison with Kyrgyz *bride kidnapping* and South African *ukuthwala* clarifies the main normative point. Customary recognition is legitimate only where it does not transform coercion into marriage through payment, shame, or family settlement. For contemporary Indonesia, especially after the 2023 Criminal Code, Article 25 offers a warning and a resource at the same time. It warns that living law may reproduce hierarchy if recognized without safeguards. It also offers a resource because customary law can still contribute to restoration and social accountability. The decisive boundary is consent, supported by legality, proportionality, and human rights review.

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