

## Analysis of Forced Marriage as an Offense of Sexual Violence

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### Abstrak

Fenomena pelaksanaan perkawinan secara paksa sebagai suatu fenomena sosial telah bergulir menjadi suatu fenomena hukum. Pemaksaan perkawinan dalam perkembangannya menjadi salah satu bentuk dari tindak pidana kekerasan seksual sebagaimana diatur di dalam Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual. Artikel ini akan menganalisis tentang pemaksaan perkawinan sebagai jenis dari tindak pidana kekerasan seksual. Fokus kajiannya adalah berkaitan dengan pengertian tindak pidana pemaksaan perkawinan dan bentuk pertanggungjawaban pidana bagi pelaku tindak pidana pemaksaan perkawinan. Hasil dari penelitian ini adalah tindak pidana pemaksaan perkawinan merupakan pelanggaran dari hak asasi manusia dan sebagai salah satu bentuk tindak pidana kekerasan seksual.

**Kata Kunci:** Pemaksaan Perkawinan; Kekerasan Seksual; Pertanggungjawaban Pidana.

### Abstract

*The phenomenon of forced marriage as a social phenomenon has turned into a legal phenomenon. In its development, forced marriage has become a form of criminal sexual violence as regulated in Law Number 12 of 2022 concerning Criminal Sexual Violence. This article will analyze forced marriage as a type of criminal act of sexual violence. The focus of the study is related to the definition of the criminal act of forced marriage and the form of criminal responsibility for perpetrators of the criminal act of forced marriage. The results of this research are that the criminal act of forced marriage is a violation of human rights and is a form of criminal sexual violence.*

**Keywords:** Forced Marriage; Sexual Violence; Criminal Liability.



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## INTRODUCTION

Marriage is a gift from God is Almighty and is unity between a man and a woman, where the goal is to form a family. Country has arranged a marriage with issue provisions through Law of the Republic of Indonesia Number 1 1974 concerning Marriage. Law of the Republic of Indonesia Number 16 of the Year 2019 concerning Amendments to the Law Republic of Indonesia Number 1 of 1974 concerning Marriage provides an age limit appropriate for a woman to do marriage. This is done to prevent the rise of child marriage or marriage in minors who can influence reproductive health, children's rights and welfare of life, especially of the woman. Currently, there are still many cases like this child marriage or underage marriage due to various factors. For example, pregnant in out of wedlock due to promiscuous sexual behavior, habits local or customs in an area as well as other bad things such as practices buying and selling children (trafficking in persons), because economic situation and so on. Such thing can be categorized as a condition that is called forced marriage.

Forced marriage according to Law of the Republic of Indonesia Number 12 of the Year 2022 concerning Crime of Sexual Violence, included in the Crime of Sexual. Forced marriage is contradictory with applicable laws and regulations because it can ruin a child's future as well as women. Forced marriage is the practice of marriage, in which one of the parties experiencing coercion, usually occurs to women, as parties are deemed to do so violation of customs or certain other reasons related to customary law in force, in the community where the couple

lives. Women in forced marriage is also a vulnerable group experience violence, whether physical, psychology, sexual and economic. Women on in general, they also receive customary sanctions twice fold to more than men, including sanctions for being forced to marry. Types of marriages found in the study culturally based violence against women, including intermarriage, elopement, Chinese marriage bind, grebeg mating (capture mating or mudemu), forced marriage due to pregnancy or having sexual relations and marriage early.

The maturing age of marriage for women, from sixteen years to nineteen years according to Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage is one of the efforts to prevent child marriage or underage marriage. Under this law, marriage is only permitted if the man and woman have reached the age of nineteen. The Draft Law on Crimes of Sexual Violence which was previously passed by the House of Representatives of the Republic of Indonesia became law and was finally promulgated by the President in May 2022. Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence contains 93 articles. This law contains important points related to acts of sexual violence, starting from the type of crime, punishment for the perpetrator, to protection for the victim.

Based on Article 4 Paragraph (1) of Law the Republic of Indonesia Number 12 of 2022 concerning Criminal Acts of Sexual Violence, there are nine types of Criminal Acts of Sexual Violence, including non-physical sexual harassment; physical sexual abuse; forced contraception; forced sterilization; forced marriage; of sexual torture; sexual exploitation; sexual slavery; electronic-based sexual violence. Each type of crime of sexual violence has detailed criminal penalties, including fines for the perpetrators. Article 10 of Law of the Republic of Indonesia Number 12 of 2022 concerning the Crime of Sexual Violence states that perpetrators of forced marriage can be sentenced to a maximum prison sentence of nine years and a maximum fine of two hundred million rupiah. The forced marriages in question include child marriages, forced marriages in the name of cultural practices, including forced marriages between victims and perpetrators of rape. Referring to Article 16 of Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence, that apart from imprisonment and fines, perpetrators of Crimes of Sexual Violence can be sentenced to additional penalties in the form of revocation of child custody or pardon, announcement of the identity of the perpetrator, confiscation of profits. obtained from criminal acts and/or restitution payments.

Forced marriage is classified as gender-based violence. The National Commission on Women states that violence against women is an act that can cause or tends to cause physical, sexual and psychological misery and suffering, both for adult women, girls and teenagers. Law of the Republic of Indonesia Number 12 of 2022 concerning Criminal Acts of Sexual Violence aims to prevent all forms of sexual violence; handle, protect and recover victims; carrying out law enforcement and rehabilitating perpetrators; creating an environment without sexual violence and ensuring the non-recurrence of sexual violence. It is hoped that the presence of Law of the Republic of Indonesia Number 12 of 2022 concerning Criminal Acts of Sexual Violence can provide assistance in resolving cases of sexual violence to protect women and children in Indonesia, especially from forced marriage.

## **RESEARCH METHOD**

This article was written using normative legal research methods with a case approach and a legislative approach relating to forced marriage as a criminal act of sexual violence. The legal materials used in this research are primary legal materials and secondary legal materials. Problems related to forced marriage as a criminal act of sexual violence are analyzed using deductive analysis.

## RESEARCH RESULT AND DISCUSSION

Marriage is a human right guaranteed by the state through the 1945 Constitution of the Republic of Indonesia. Forming a family and continuing offspring through legal marriage is the right of every Indonesian citizen as confirmed in Article 28B Paragraph (1) of the Constitution of the Republic Indonesia 1945, which states: "Everyone has the right to form a family and continue their offspring through legal marriage." The right to marry is also regulated in Article 10 of the Constitution of the Republic of Indonesia Number 39 of 1999 concerning Human Rights which states that:

1. Every person has the right to form a family and continue their offspring through a legal marriage;
2. A legal marriage can only take place based on the free will of the prospective husband and prospective wife concerned, in accordance with the provisions of statutory regulations.

A valid marriage means that it has fulfilled all the requirements that have been determined, both religiously and according to the laws in force in Indonesia. Provisions regarding marriage as previously explained are regulated in Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage and its implementing regulations, namely Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning Implementation of Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage. The marriage age for women, from sixteen years to nineteen years, is regulated in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. Based on the provisions of the law above, it can be concluded that marriage is every person's human right. Thus, a legal marriage cannot be consummated because of coercion.

Forced marriage in Indonesia is included in one of the criminal acts of sexual violence as contained in Article 10 Paragraph (1) Letter e of Law of the Republic of Indonesia Number 12 of 2022 concerning Criminal Acts of Sexual Violence. The forced marriage referred to refers to Article 10 Paragraph (2) of Law of the Republic of Indonesia Number 12 of 2022 concerning the Crime of Sexual Violence, namely:

1. child marriage;
2. forced marriage in the name of cultural practices; or
3. forcing the marriage of the victim to the perpetrator of the rape.

One of the factors driving the practice of child marriage is existing cultural traditions. The cultural interpretation in question includes, among other things, that women who have menstruated are considered ready to marry; the notion of being an old maid and being used as gossip; preventing adultery or bad things; matchmaking; maintaining class and social status; unwanted pregnancy; and took the girl away. In the name of culture, pregnancy caused by rape is considered to cover the family's disgrace. In some areas, girls found at the age of nine or ten have already been single parents two to three times. The practice of marrying girls is also a form of ngalap blessing (hoping for blessings) by marrying them off to local religious figures. The aim is as an offering to obtain blessings from the Creator.

Some of the Indonesian Government's efforts to prevent child marriage are by issuing several provisions or laws and regulations. One of them agreed to raise the minimum age for women to marry from sixteen to nineteen. This is a follow-up to the 2018 Constitutional Court decision which stated that age differences are a form of discrimination. Age maturation is also a priority in the 2015-2019 National Medium Term Development Plan. The National Development Planning Agency has determined that preventing child marriage is one of the strategic issues listed in the 2020-2024 National Medium Term Development Plan for Child

Protection in 2019. This commitment is strengthened by the preparation of the National Strategy for the Prevention of Child Marriage which is in line with the targets in the Goals. Sustainable Development, namely the elimination of all harmful practices such as child marriage. The types of marriage found in the Study of Culture-Based Violence Against Women include serial marriage, elopement, blind Chinese marriage, grebeg marriage (arrest or mudemu marriage), forced marriage due to pregnancy or sexual intercourse and early marriage. The National Commission on Violence Against Women in the Culture-Based Violence Against Women Study area also found that there are traditional settlement mechanisms and space for negotiation between parties when forced marriages occur, although they tend not to side with women.

Cases of forced marriage are also often experienced by women victims of sexual violence whose aim is to cover up the disgrace of both families, so that the child born to the victim will then have a father, or avoid criminal responsibility or criminal punishment. This marriage mode is because the victim and her family feel cornered by the burden of having to bear the stigma of disgrace resulting from the rape. Forced marriage, which then becomes the reason for resolution through restorative justice mechanisms, actually distances victims from access to justice and recovery, places victims in situations of violence, causes impunity for perpetrators, and normalizes sexual violence. The victim on the other hand, because of her subordinate position as a woman or girl, is forced to follow the family's decision for reasons of good name or the hope that the perpetrator will be responsible for the victim and the child born later. In reality, after forced marriage, victims are actually at risk of experiencing sexual violence, physical violence, psychological violence and neglect within the household. The act of marrying the victim to the perpetrator of rape, apart from only confirming the impunity of the perpetrator, also places women as rape victims in a chain of violence.

Every Indonesian citizen has the right to receive protection and justice from all forms of discrimination, violence or treatment that can degrade human dignity. This is in accordance with what is mandated in the constitution, Article 28I Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, namely: "Everyone has the right to be free from discriminatory treatment on any basis and has the right to receive protection against such discriminatory treatment". The Plenary Session of the House of Representatives of the Republic of Indonesia on April 12 2022 passed a new law which was then announced by the State Secretariat as Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. The ratification of this law during a long journey from 2015 to 2022 in parliament and various discussions at the civil society level, there is a process that is also underway to encourage the adoption of this law, namely through the implementation of the United Nations Human Rights system.

In simple terms, what is meant by the implementation of the United Nations Human Rights system is the advocacy process for the adoption of the Sexual Violence Crime Law through the use of Human Rights mechanisms that apply to the Indonesian state. Indonesia as a member country of the United Nations has an obligation to review progress in fulfilling Human Rights in its own country periodically, namely every four to five years. This review mechanism is called the Universal Periodic Review, where a country's Human Rights conditions are reviewed through peer review by other United Nations member countries to then obtain a number of recommendations. Indonesia received 225 recommendations from 110 country delegations, and finally adopted 167 of the 225 recommendations received at the third Universal Periodic Review. If a country states that it has adopted a recommendation, it means that the country is committed to implementing the adopted recommendation.

Based on the records of the National Women's Commission, the issue of women's human rights was the most recommended by various countries in the 2017 Universal Periodic Review



session. There were at least 74 recommendations directly related to the fulfillment of women's human rights, including recommendations to eliminate discrimination and violence against women. , including strengthening the legal system to criminalize all forms of sexual violence. A number of countries also recommend that victims of violence receive reparation and guarantee that there will be no impunity for perpetrators of violence. The crime of sexual violence is a form of violation of human rights and is a crime that degrades human dignity. This is because the crime of sexual violence has a tremendous impact on the victim, in the form of physical, mental, psychological and other suffering which can affect their social life, future and quality of life. The trauma caused as a result of criminal acts of sexual violence against victims is of particular concern for the Indonesian government to enforce the law so that all forms of crime and violations of human rights, especially women, can be eliminated.

Until now there are laws and regulations that regulate several forms of sexual violence, but their form and scope are very limited. Current laws and regulations are not yet able to fully address several types of criminal acts of sexual violence that occur and develop in society. This is due to several factors such as the influence of local culture, hereditary traditions, customary laws and others. The process of investigation, examination and prosecution in court regarding cases of criminal sexual violence also still does not pay attention to the rights of victims and tends to blame the position of the victim. Prevention efforts and community involvement are also very necessary in realizing environmental conditions that are free from all forms of sexual violence. The presence of Law of the Republic of Indonesia Number 12 of 2022 concerning the Crime of Sexual Violence is expected to be able to provide a material and formal legal basis that can guarantee certainty and meet the legal needs of the community. Several breakthroughs in Law of the Republic of Indonesia Number 12 of 2022 concerning the Crime of Sexual Violence, include:

1. Apart from qualifying the types of criminal acts of sexual violence as regulated in this law, there are also other criminal acts which are expressly declared as criminal acts of sexual violence as regulated in the provisions of other laws and regulations.
2. There are comprehensive procedural legal arrangements starting from the stages of investigation, prosecution and examination in court while still paying attention to and upholding human rights, honor and without intimidation.
3. The victim's right to treatment, protection and recovery since the crime of sexual violence occurred, which is the state's obligation and is carried out in accordance with the condition and needs of the victim. Great attention to the suffering of victims can also be seen in the form of providing restitution. Restitution is given by the perpetrator of the Crime of Sexual Violence as compensation for the victim. If the convict's assets are confiscated, if the restitution costs are not sufficient, the state will provide compensation to the victim in accordance with the court's decision.
4. Cases of criminal acts of sexual violence cannot be resolved outside the judicial process, except for child perpetrators.

Forced marriage, as previously explained, is included in one type of sexual crime (see Article 4 Paragraph (1) Letter e of Law of the Republic of Indonesia Number 12 of 2022 concerning the Crime of Sexual Violence). Because forced marriage is a criminal act, it must therefore fulfill the aforementioned elements in order to be held accountable for the perpetrators. Referring to Article 10 Paragraph (2) of Law of the Republic of Indonesia Number 12 of 2022 concerning Criminal Acts of Sexual Violence, including forced marriage as follows:

1. Child marriage.
2. Forced marriage in the name of cultural practices.
3. Forced marriage between the victim and the perpetrator of the rape.

Women who are forced into marriage in the name of cultural practices are a group that is very vulnerable to experiencing violence, both physically, psychologically, sexually, economically, and in layers between these types of violence. Women in this situation experience ambiguous conditions. The position of women is between refusing and accepting forced marriage, experiencing violence that is no less severe, both from customary sanctions and social sanctions at a higher level than men. Customary fines are also equalized between women who are victims and perpetrators, where the reason is that both parties are responsible for the marriage. This happens without seeing that in every practice, women experience multiple layers of coercion and violence.

## CONCLUSION

Marriage is a human right guaranteed by the state through the 1945 Constitution of the Republic of Indonesia. A valid marriage means that it has fulfilled all the requirements that have been determined, both religiously and according to the laws in force in Indonesia. Forced marriage in Indonesia is included in one of the criminal acts of sexual violence as contained in Article 10 Paragraph (1) Letter e of Law of the Republic of Indonesia Number 12 of 2022 concerning Criminal Acts of Sexual Violence. Forced marriage, as explained previously, is included in one type of sexual crime (see Article 4 Paragraph (1) Letter e of Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence). Because forced marriage is a criminal act, it must therefore fulfill the aforementioned elements in order to be held accountable for the perpetrators. The form of accountability for perpetrators of forced marriages, whether child marriages, forced marriages in the name of cultural practices or forced marriages between victims and perpetrators of rape, is sanctions in the form of fines and/or imprisonment as stated in Article 10 Paragraph (1) of Law of the Republic of Indonesia Number 12 of 2022 concerning Actions Sexual Violence Crime carries a maximum fine of two hundred million rupiah, a maximum prison fine of nine years.

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