

Child Marriage in Indonesia: Sexual Violence or Not?

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Abstract:

Child marriage in Indonesia presents a progressive article as stated in Article 4 of Law Number 12 of 2022 concerning the crime of sexual violence. This is a problem that is quite complicated for the Indonesian people because child marriage creates new problems because it contains elements of punishment. In this regard, this paper aims to examine how the interpretation of the article on the punishment of children is carried out, how to implement the elements of punishment for child marriage as stipulated in the Act on the Crime of Sexual Violence and how to review Islamic law on the article on the punishment of child marriage. The results of the study show that the Article policy with certain threats for perpetrators of mental sexual violence through child marriage is carried out by giving criminal sanctions. the implementation of punishment for the perpetrators involved in the occurrence of child marriages with coercion is the use of criminal sanctions. while the review of Islamic law on the article on criminalizing child marriage should be measured more deeply using the right of ijbar and ikrah as they should because both have different positions and meanings.

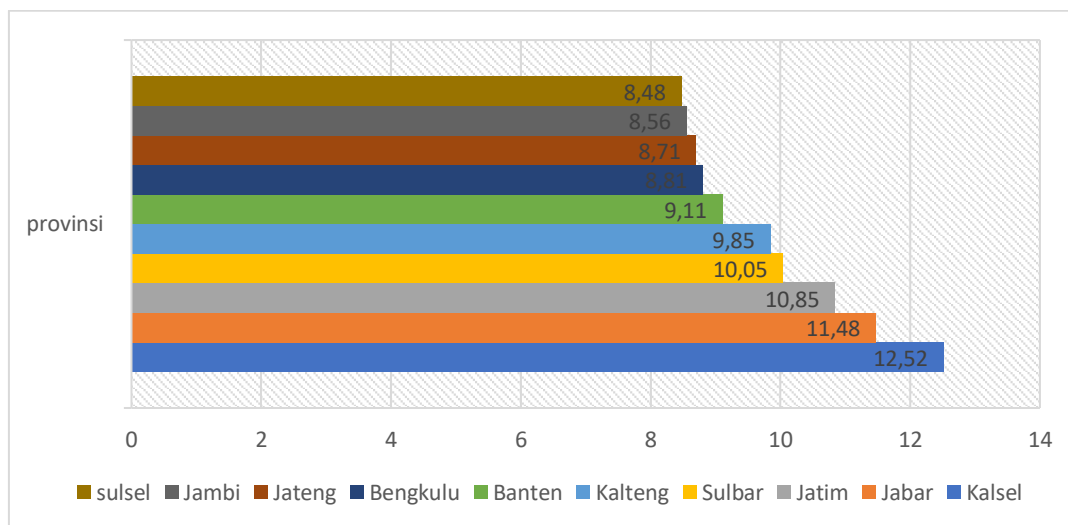
Keyword: Islamic Law, Criminal Article, Child Marriage

Introduction

Regulations regarding child marriage regarding the age limit for marriage with the aim of protecting it have been formulated in various regulations in Indonesia. However, the formulation of the formulation of how child marriage regulations in child protection are not comprehensive, even partial and not comprehensive. In addition, the available formulations do not yet show a procedural law system that is

able to clearly and clearly explain its implementation. In other words, the law presented in the community has not been able to fulfill the element of legal certainty in its implementation, so that one of the goals of punishment based on theory has not been fully achieved. In addition, even though in the ratification of the draft law on the crime of sexual violence, hereinafter referred to as the TPKS Bill, it becomes a law on the crime of sexual violence, hereinafter referred to as the TPKS Law, it is a solution for victims of sexual violence.¹

The pros and cons of the ratification of the Draft Law on the Crime of Sexual Violence have basically occurred since 2016.² This law is intended to be a legal innovation, especially for victims of sexual violence. Law Number 12 of 2022 concerning the Crime of Sexual Violence is at least limited to 9 (nine) crimes of sexual violence. Nine of them are forced marriage, sexual exploitation, sexual slavery, electronic-based sexual violence, sexual torture, non-physical harassment, physical sexual harassment, forced contraception and forced sterilization.³ The issue of sexual violence is a problem for many parties that requires a comprehensive solution. Everyone is at risk of experiencing sexual violence, especially through child marriage. Based on the Socio-Economic Survey (SUSENAS) shows 8.19% of women who marry at the age of 7-15 years.⁴ The following is data on the 10 provinces in Indonesia with the highest cases of child marriage throughout 2020:



¹ Hasanuddin Muhammad, "Implikasi Yuridis Pengaturan Hak Korban Tindak Pidana Kekerasan Seksual Dalam Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual," *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum Dan Keadilan* 9, no. 1 (2022): 1–15,

² Falarasika Anida Paulina et al., "HUKUM BAGI KORBAN KEKERASAN SEKSUAL BESERTA TANTANGAN-TANTANGAN DALAM PROSES PENGESAHANNYA," *Sovereignty: Jurnal Demokrasi dan Ketahanan Nasional* 1, no. 1 (2022): 136–150.

³ Nabila Naris Ghina Nabila, Atika Nur, Irene Maria, "Perlindungan Hukum Bagi Korban Kekerasan Seksual: Sebagai Upaya Pemulihan Dan Hak Privasi Korban Kekerasan Seksual Di Era Disrupsi Digital," *Pleads: Panjadjaran Law Review* 10, no. 10 (2022): 1.

⁴ Viva Budi Kusnandar, "10 Provinsi Dengan Pernikahan Perempuan Usia Dini Tertinggi Pada 2020," *Databoks*, 2021.



The data above shows that many Indonesians engage in underage marriages. Even though the state has set the age limit for marriage as stated in Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage which shows that the age limit for marriage is 19 years for both men and women. In general, Indonesian women marry under the age of 7 to 15 years or as much as 8.19% of the total number of women in Indonesia according to the National Socio-Economic Survey (SUSENAS) throughout 2020. As a country with a majority Muslim population, it seems that the phenomenon of high child marriage will always occur. associated with Islamic law as a religious rule with the largest religious adherents in Indonesia.

Islam is the religion that underlies the guarantee, protection and protection for the benefit of mankind. Commands or prohibitions that are loaded have a binding nature and must be obeyed by all people. Under certain conditions, the rules in question are accompanied by threats for violators. On the other hand, children are a gift from God who must always maintain their dignity, nature and rights as the adult human beings in the future. Children must always get life guarantees to be able to continue to grow and always develop as human dignity. Therefore, all kinds of actions that can eliminate or damage children's rights in the form of violence, persecution or exploitation must be resolved immediately in any form.⁵ Islam basically also regulates the need to respect the honor and rights of children. Children should get strict guard from things that can neglect their future growth. However, the reality that is happening in today's society is that there are still written and unwritten rules which in their implementation are still difficult to achieve the protection of children's rights, thus placing children in an oppressed and weak place.

Based on the description above, it is important to conduct this research to provide a solution to the problem of child marriage and the potential for criminal prosecution through a review of Islamic law. The unification of Islamic law in Indonesia with how social phenomena are socialized shows the ideal form in its application. Islamic law continues to experience adjustments to the legal transformation process and its influence on changing times. So, in this study, at least it aims to examine how the interpretation of the article on the punishment of children is carried out, how the implementation of the element of punishment for child marriage as in the Act on the Crime of Sexual Violence and how Islamic law reviews the article on the punishment of child marriage.

The research method used in this research is juridical-sociological, namely the research method that connects the actual conditions in society with the law as a gate in events that occur in society itself. Sources of data in this study consisted of primary sources and secondary sources. Primary sources were obtained through data searches and interviews with informants who have relevance to the problems in this study. While secondary sources are a collection of literacy such as books, articles, laws and

⁵ Hukum Islam, Ilmu Hadis, and Ekonomi Syariah, "INDIKATOR DAN TINJAUAN HUKUM ISLAM TERHADAP PERNIKAHAN ANAK DIBAWAH UMUR SERTA PENGARUHNYA DALAM KEHIDUPAN BERUMAH TANGGA Abdur Rahman Adi Saputera," *Setara: Jurnal Studi Center Dan Anak* 04, no. 01 (2022): 1–17, <https://doi.org/10.32332/jsga.v4i01.4598>.



regulations and others. The validity of the data in this study used a credibility test which consisted of extending observations, increasing persistence, and triangulation in the form of source triangulation, method/technical triangulation, and member checks. The data analysis technique used is descriptive qualitative, namely describing quality data in the form of regular, coherent, logical and non-overlapping sentences so as to facilitate the implementation of the data and understanding of the results of the analysis.

A search on previous research that has a relationship with this research was carried out by Faisal Nawi Nasution with the title Review of Islamic Law Against the Criminalization of Child Rape Perpetrators in Positive Law (Curup District Court Decision Number: 7/Pid.Sus-Anak/2016/PN.Crp). The focus of this research study lies in the punishment of child perpetrators of the crime of theft according to positive law and Islamic law which have similarities in terms of enforcing criminal cases, in addition to determining the minimum age limit for punishing children must also be considered in handling cases handled.⁶ Furthermore, research conducted by Aulia Hamida and Joko Setyono entitled Critical Analysis of Protection for Children Victims of Domestic Violence is a comparative study of law. This study describes a comparison of legal protection for children who are victims of domestic violence in Indonesia and Malaysia. The study states that the protection of child victims of domestic violence in Indonesia is spread in several regulatory instruments. Whereas in Malaysia child protection has been regulated in the Child Deed since 2001 without any state agency or institution that specifically handles children's problems.⁷ The next research is Muammar Wafiuddin, entitled The Law on Sexual Violence Regarding Forced Marriage from a Feminist Perspective Legal Theory. Research shows that the formulation of forced child marriage is part of violence based on threats, intimidation and influence both verbally and by actions that are not wanted or expected by either party. The compulsion in child marriage then fulfills the elements contained in the Sexual Violence Act which prioritizes the values of equality and justice.⁸ Rahiem's research shows that self-marriage occurs due to 4 things; first; the way students think about marriage is the best way to let go of the burden of school during a pandemic. Second; customary law that allows child marriage. Third; lack of understanding of the negative impacts of early and fourth marriages; economic factors that cause parents to marry their children even at an early age and sixth: environmental influences.⁹ Research by Rinto Wibowo et al shows that one in four people has a tendency to support child marriage. In addition, 25.6% of parents and 32.6% stated

⁶ Faisal Nawi Nasution, "Tinjauan Hukum Islam Terhadap Pemidanaan Anak Pelaku Pemerkosaan Dalam Hukum Positif" (UIN Syarif Hidayatullah Jakarta, 2018).

⁷ joko setyono aulia hamida, "Analisis Kritis Perlindungan Terhadap Anak Korban Kekerasan Dalam Rumah Tangga: Kajian Perbandingan Hukum," *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 73–88.

⁸ Mu'ammarr Wafiuddin, "NUndang-Undang Tindak Pidana Kekerasan Seksual Tentang Pemaksaan Perkawinan Perspektif Feminist Legal Theory" (Institut Agama Islam Negeri (IAIN) Ponorogo, 2022).

⁹ Maila DH Rahiem, "Covid-19 And Surge of Child Marriages: A Phenomenon in Nusa Tenggara Barat," *Child Abuse And Neglect* 118 (2021).



that daughters were a burden when they were not married at the age of 18.¹⁰ Dian Latifiani's research shows that culture is a challenge in itself in early marriage.¹¹ Mies and Hoko's research shows that the family law that was made created a conflict that resulted in friction with human rights.¹² Nugraha's research outlines that the state provides legal protection for women through the minimum age limit for marriage in the Constitutional Court decision No 22/PUU-XV/2017.¹³

Based on this research, it shows that this study provides a different definition of the point of view used. In addition, this study examines the Articles contained in Law Number 12 of 2022 concerning the Crime of Sexual Violence relating to child marriage. In addition, the article contained in Law Number 12 of 2022 concerning the Crime of Sexual Violence contains elements of a criminal act. The results of this study are expected to contribute to all levels of society as well as local authorities in responding to facts that occur in the community about child marriage which may contain criminal elements. This is important considering the bad effects of early marriage cannot be ignored and underestimated. this paper aims to examine how the interpretation of the article on the punishment of children is carried out, how to implement the elements of punishment for child marriage as stipulated in the Act on the Crime of Sexual Violence and how to review Islamic law on the article on the punishment of child marriage. The results of the study show that the Article policy with certain threats for perpetrators of mental sexual violence through child marriage is carried out by giving criminal sanctions. the implementation of punishment for the perpetrators involved in the occurrence of child marriages with coercion is the use of criminal sanctions. while the review of Islamic law on the article on criminalizing child marriage should be measured more deeply using the right of *ijbar* and *ikrah* as they should because both have different positions and meanings.

Result and discussion

Interpretation in the Article on the Criminalization of Child Marriage

Article on the criminalization of child marriage as stipulated in Law Number 12 of 2022 concerning the Crime of Sexual Violence has the aim of preventing all forms of sexual violence, dealing with, protecting and recovering victims, thirdly implementing law enforcement and rehabilitating perpetrators, fourth, creating an environment without violence and ensure the non-recurrence of sexual violence as

¹⁰ EmilieMinnick Heribertus RintoWibowo, Muliani Ratnaningsih, Nicholas JGoodwina, Derry FahrizalUlum, "One Household, Two Worlds: Differences of Perception towards Child Marriage among Adolescent Children and Adults in Indonesia," *The Lancet Regional Health Western-Pacific* 8 (2021).

¹¹ Dian Latifiani, "THE DARKEST PHASE FOR FAMILY: CHILD MARRIAGE PREVENTION AND ITS COMPLEXITY IN INDONESIA," *JILS: Journal Of Indonesian Legal Studies* 4, no. 2 (2019): 241–60.

¹² Mies abd hoko horri GriJNS, "Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns," *Asian Journal of Law and Society* 2 5, no. 2 (2018).

¹³ Annida Aqila Putri Xavier Nugraha, Risdiana Izzaty, "Rekonstruksi Batas Usia Minimal Perkawinan Sebagai Bentuk Perlindungan Hukum Terhadap Perempuan (Analisa Putusan MK No. 22/Puu-Xv/2017)," *Lex Scientia Law Review* 3, no. 1 (2019): 40–54, <https://doi.org/https://doi.org/10.15294/lesrev.v3i1.30727>.



referred to in Article 3.¹⁴ furthermore Article 4 confirms that criminal acts of sexual violence consist of physical sexual harassment, physical sexual harassment, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery and electronic-based sexual violence. The next article as referred to in Article 10 paragraph (1) states that "every person unlawfully coerces, places someone under his control or another person or abuses his power to perform or allow marriage to be carried out with him or with another person shall be punished for forced marriage with a criminal sanction. imprisonment for a maximum of 9 (nine) years and/or a maximum fine of Rp. 200,000,000 (two hundred million rupiah). The coercion in question includes child marriage as cited in paragraph (2) of Law Number 12 of 2022 concerning the Crime of Sexual Violence.

Forced marriage is sexual violence because it is related to marriage that is not desired by certain parties, including marriage to children. Marriage outside of his own will occurs if the woman does not have an argument to reject the will of a particular party to marry. In practice this marriage occurs with people who are not expected to be partners even with people who are not recognized. In addition, forced marriages can occur as a result of rape events, in other words marrying the perpetrators of rape.¹⁵ And lastly, the possibility of forced marriage in the condition that one of the parties basically wants a divorce. Based on this, at least there is no element of crime in forced marriage as follows: a. Coercion in marriage; b. Done with all forms of threats, seduction, pressure and possible lies; c. Encouraging compulsion for children to marry.

Forced marriages as a form of sexual violence are basically common in society. This social event has been happening for a long time. For some areas in Indonesia this practice is a common occurrence. The implementation of forced marriage has several forms, including through arranged marriages. Matchmaking can occur in certain families between parents and their children. Children who are forced into marriage with people who may not be known or who do not really want to be married. Matchmaking can also occur between certain people and their potential partners who do not want marriage to occur but cannot refuse for certain reasons. Coercion of marriage can also occur in acts of rape so that for the purpose of maintaining family honor so that victims of rape marry with perpetrators who are not wanted to become marital partners.

The reasons for the occurrence of forced marriages are basically not based on regulations regarding Human Rights in the mandate of the 1945 Constitution Article 28B paragraph (1) which reads that everyone has the right to form a family and continue their offspring through a legal marriage, paragraph (2) which reads Every child has the right to survival, growth, and development and the right to protection

¹⁴ Agnes Kusuma Wardani Natasya Fila Raiz, Gracia Putri Manurung, "Analisis Keberlakuan RKUHP Dan RUU-PKS Dalam Mengatur Tindak Kekerasan Seksual," *Lex Scientia Law Review* 3, no. 1 (2019): 55–68, <https://doi.org/https://doi.org/10.15294/lesrev.v3i1.29788>.

¹⁵ Natalie John Rebecca j Macy, Mary Giattina, Tamara H Sangster, Carmen Crosby, "Domestic Violence and Sexual Assault Services: Inside the Black Box," *Aggression And Violent Behavior* 14, no. 5 (2009): 359–73, <https://doi.org/https://doi.org/10.1016/j.avb.2009.06.002>.



from violence and discrimination. And the Law of the Republic of Indonesia Number 39 of 1999 Article 10 paragraph (1) concerning Human Rights or what is commonly referred to as the Human Rights Law which reads " Everyone has the right to form a family and continue the lineage through a legal marriage, which means a marriage carried out in accordance with the provisions of the legislation. Paragraph (2) which reads "A valid marriage can only take place at the free will of the prospective husband and prospective wife concerned, in accordance with the provisions of the legislation. Meanwhile, what is meant by free will is the will born of a holy intention without any coercion, fraud, or pressure from anyone against a prospective husband and or prospective wife.

Based on this fact, the state has guaranteed everyone's freedom in determining how to marry. The rights mentioned should not be interfered with by other parties under any circumstances.¹⁶ As mentioned in the 1945 Constitution of the Republic of Indonesia and the Law on Human Rights, human rights are part of non-derogable rights or human rights that cannot be reduced or completely limited by other people or the state. Furthermore, coercion in the article on the criminalization of child marriage allows perpetrators of deprivation of human rights to occur. M. Rahmad in the encyclopedia of social conflict states that violence is a form of cruelty, ferocity and is a behavior that is intentionally or unintentionally carried out by a person or group to suppress or hurt another party. Violence can also be interpreted as a form of action carried out with the aim of oppressing the weak with the aim of suffering for the victim or certain benefits for the perpetrator. Violence itself is divided into two physical violence and psychological violence. Physical violence is carried out by hitting, slashing or kicking or even killing someone. Physical violence is also done in real or can be seen and felt by the body directly. Physical violence generally leaves an impression on the body of the recipient of the violence. Physical violence does not only occur between people outside the family relationship but can also occur between family members, either between husband and wife or between parents and their children.¹⁷

Meanwhile, psychological violence is carried out by means of coercion or threats to other people or certain groups to do things that are basically undesirable so that they can harm certain parties. Psychological violence can sometimes affect a person's mental or soul. The form of psychological violence can be in the form of speech that can hurt feelings, insults and so on. The impact of psychological violence is fear to trauma. For someone who has experienced violent psychological violence, it is possible to need assistance by a psychologist or psychiatrist. In addition, the most important thing for victims of psychological violence is support and assistance from both the family and the surrounding environment to get the peace and tranquility

¹⁶ Ahmad Rifqi Muchtar Hotnidah Nasution, "Access to Justice for Women and Children in Divorce Cases in the Indonesian Religious Courts," *Ahkam: Jurnal Ilmu Syariah* 20, no. 2 (2020), <https://doi.org/https://doi.org/10.15408/ajis.v20i2.15702>.

¹⁷ Hotma Siregar Atikah Rahmi, "Community-Based Recovery for Sexual Violence Victims: The Case of Hapsari," *Ahkam: Jurnal Ilmu Syariah* 20, no. 1 (2020), <https://doi.org/https://doi.org/10.15408/ajis.v20i1.13520>.



that is expected for the victim. Whereas like physical violence, psychological violence can occur in the family environment, either between husband and wife or between parents and children.

Violence in the family has basically been regulated in Law Number 23 of 2004 concerning the elimination of domestic violence. The law in detail states that domestic violence can occur if every act against a person is said to be a form of violence if it causes physical, sexual, psychological suffering or misery, and or neglects the household.¹⁸ Violence can also occur because of a threat to do an act, coercion to do an act or forcibly taking a freedom that can be against the law and occurs in a household environment.

Whereas on the other hand that marriage which is the nature of every human being is not based on his own will but the will of one party or parties outside the couple who do the marriage. In addition, forced marriage may occur because it is accompanied by threats that cause the death of a person's freedom to determine his life choices through marriage. Sexual violence that occurs through forced marriage for children also gives rise to the potential for coercion of sexual relations. This type of coercion can lead to relationships outside the will of certain parties, both the wife and the husband. This is because marriage is always related to sexual activity. If this happens (sexual intercourse in husband and wife that is not desired by one of the parties), then the worst possibility is the emergence of threats that occur both verbally and threats of treatment.¹⁹ Furthermore, the possibility that can occur is the emergence of rape in a husband and wife relationship or what is commonly known as marital rape.

Marital rape as mentioned in the family law virtual talks: gender series raises pros and cons. Marital rape is a sexual relationship in marriage that occurs without the consent of one party.²⁰ However, on the other hand, marital rape is something that should be done by a wife who acts as a servant for her husband in the household, both physical and biological services. Whereas in certain circumstances the wife is in a condition that does not want sexual intercourse. The wife basically has the authority for herself. The authority possessed by the wife in a husband and wife relationship is to refuse in terms of husband and wife relations as stated in Law Number 23 of 2004 concerning domestic violence (KDRT).

Marital rape reality tends to be foreign to some people. This is due to the inherent cultural values in society regarding the obligations of the wife to be submissive, obedient and faithful to serve her husband. Marital rape occurs in various forms, including non-consensual vaginal, anal or oral penetration that occurs on the

¹⁸ Moh Usman, "Sinkronisasi Regulasi Tentang Hak Ekonomi Anak Di Indonesia Dengan Convention on The Rights of Child/Synchronization Of Regulation on Children's Economic Rights in Indonesia With The Convention on The Rights of The Child," *De Jure: Jurnal Hukum Dan Syariah* 12, no. 2 (2020): 214–26, <https://doi.org/https://doi.org/10.18860/j-fsh.v12i2.7661>.

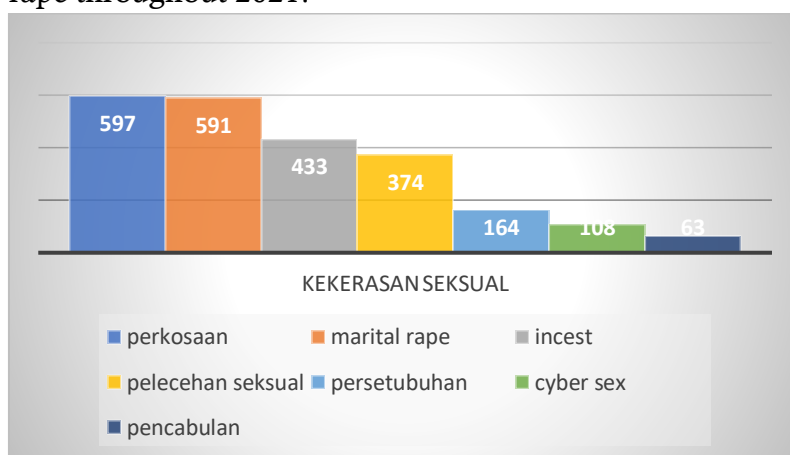
¹⁹ Hijrah Adhyanti Mirzana Feby Reski Utami, Haeranah, "Visum Et Repertum As Evidence In The Crime Of Marital Rape," *Journal of Positive School Psychology* 6, no. 8 (2022): 1142.

²⁰ S A Mirkamali, "Legal and Jurisprudential Bases of Marital Rape Criminalization," *Journal Of Family Research* 13, no. 3 (2017): 389–405.



body of another person who is sexual in nature by a partner in a marriage bond.²¹ Marital rape can occur by making threats, intimidation or violence if one partner does not want sex under certain conditions. Marital rape can occur in children who are forced to marry. Under certain conditions, girls who experience forced marriages with men who have more dominance over their future wives and view their wives as sexual objects.

Based on data quoted by the National Resource Center on Domestic Violence (NRCDV) shows that in the United States as many as 10% to 14% of women who have married experienced rape by their husbands. Meanwhile, based on annual records submitted by the National Commission on Violence Against Women or commonly referred to as Komnas Perempuan, marital rape or marital rape ranks second after rape throughout 2021.²²



Based on the data above the amount. Marital rape is the second highest case with 591 cases out of all cases after rape. This shows that the risk of sexual violence for married couples who engage in underage marriages is quite vulnerable to experiencing this problem. The high number of cases should be a serious concern for policy makers to continue to make efforts to protect their citizens. Discussing the implementation of punishment for child marriage as regulated in the TPKS Law is actually the same or no different from the implementation of punishment for other criminal acts. That is, the provisions that must be followed in order to be able to impose a crime against an act or actions are the same. In addition to the provisions or rules, the principles and theories that form the basis and signs for the implementation of sentencing are also the same.

Another thing that is first considered in the imposition of a criminal or sentencing is the function of criminal law which is subsidiary, meaning that criminal law is the last remedy (*ultimum remidum*). Criminal law, in this case criminal

²¹ Sularto Sari, Ardila Arumita, “KEBIJAKAN FORMULASI KEKERASAN SEKSUAL TERHADAP ISTRI (MARITAL RAPE) BERBASIS KEADILAN GENDER DI INDONESIA,” *Jurnal Pembangunan Hukum Indonesia* 1, no. 1 (2019): 117–27, <https://doi.org/https://doi.org/10.14710/jphi.v1i1.117-127>.

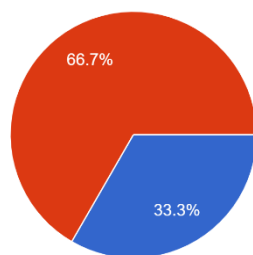
²² Vika, “Perkosaan Dominasi Kasus Kekerasan Seksual Terhadap Perempuan Sepanjang 2021,” *databoks*, 2022, <https://databoks.katadata.co.id/datapublish/2022/03/09/perkosaan-dominasi-kasus-kekerasan-seksual-terhadap-perempuan-sepanjang-2021>.



sanctions, will only be imposed if other efforts or methods have not been able to resolve the problem.²³ Based on the subsidiary criminal law functions, the imposition of criminal sanctions on child marriage must be careful and limitative. Not all perpetrators of child marriage can be punished. Article 10 of the TPKS Law states that those who can be subject to criminal sanctions are perpetrators of forcing child marriages. Therefore, it must be clear whether in a child marriage there has been coercion.²⁴

Furthermore, criminal sanctions can only be imposed if the act committed by a person is a crime. To be able to say an act is a crime, then the act must meet the elements of a criminal act. Based on the opinion that the elements of a criminal act include the existence of actions that are prohibited by law, the existence of acts that are against the law, the perpetrators have mistakes and the perpetrators are able to take responsibility. Based on the elements of the crime, it must be broken down one by one to find out whether the elements of a crime are fulfilled by an act. First, the act must be prohibited by law. Coercion of marriage is clearly prohibited by the TPKS law as stated in Article 10, then it must be seen whether the act committed by someone is against the law or is carried out illegally.²⁵ Perpetrators of forced child marriage are committed by mistake. Errors in criminal law have two forms, namely intentional and negligence. In forced child marriage, it is definitely done intentionally. The person who enforces child marriage has the ability to be responsible, meaning that the person is an adult and has a healthy mind and soul. If the person who enforces child marriage fulfills these elements, then the sanctions contained in Article 10 of the TPKS Law can be imposed on him.

However, before the sanctions are imposed, of course it must be analyzed whether the child marriage was indeed carried out by force? To know it, it must be known what the meaning of coercion is and to what extent the act can be said to be coercive. The following is data on cases that have been handled by legal professionals after the enactment of the TKPS Law.



Based on 3 overall informants in the study, 2 informants said that they had never handled a forced marriage dispute on children. If the elements in Article 335 of the Criminal Code are proven, it can be said that there has been coercion. When the elements of a criminal act are proven, the elements in

²³ Inna Fauziatal Ngazizah, Any Ismayawati, "Criminal Acts in Completing Early Marriage Requirements;," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (2022): 449–67, <https://doi.org/10.22373/sjhk.v6i1.13001>.

²⁴ Eko Nurisam, "Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022," *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022): 170–96, <https://doi.org/https://doi.org/10.14710/jphi.v4i2.170-196>.

²⁵ Irvan Rizqian, Peran Negara, and Kata Kunci, "Upaya Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Kekerasan Seksual Dikaji Menurut Hukum Pidana Indonesia," *JOURNAL JUSTICIABELLEN* 01, no. 01 (2021): 51–61.



the alleged article are proven, then criminal sanctions can be imposed. Saying "can" be imposed means that criminal sanctions do not have to be used to solve child marriage problems. Criminal sanctions remain as a last resort.

A Study of Islamic law on the Article on the Criminalization of Child Marriage

Sexual violence can also be interpreted as a form of sexual relationship that contains elements of coercion. This can be interpreted that this activity is a deviant sexual behavior because it harms one party and can damage the form of personal and group peace. Sexual violence in another sense can be interpreted as a form of humiliation, assault and or other acts directed at a person's body or sexual desire forcibly. In addition, this act is also contrary to the will of someone who directly or indirectly cannot or is reluctant to show agreement freely because of differences in the relationship of authority. The result is suffering or harm psychologically, physically, economically or sexually.

Forced marriages as a form of sexual violence are basically common in society. This social event has been happening for a long time. For some areas in Indonesia this practice is a common occurrence. The implementation of forced marriage has several forms, including through arranged marriages. Matchmaking can occur in certain families between parents and their children. Children who are forced into marriage with people who may not be known or who do not really want to be married. Matchmaking can also occur between certain people and their potential partners who do not want marriage to occur but cannot refuse for certain reasons. Coercion of child marriage can also occur in acts of rape so that for the purpose of maintaining the honor of the family so that victims of rape marry with perpetrators who are not wanted to become marital partners. Children are not assets to be objects of certain actions. However, based on research conducted by Suyanto, it is stated that many girls from poor families in Asia are traded by their parents as a means of exchanging guarantees to obtain commercial benefits.

The urgency of the need to the morality of the parents or other parties who enforce marriage for the child creates a compulsion for the child to experience a life that is sometimes unwanted. Whereas Islam itself has basically proclaimed the protection of children.²⁶ As the word of Allah SWT in the letter at-Tahrim verse 6 which reads:

O you who believe, protect yourselves and your families from a hell fire whose fuel is humans and stones: the guardians of the angels are harsh, harsh and do not disobey Allah in what He commands them and always do what He is commanded.

This verse is basically closely related to the previous verse which contains Allah's rebuke which was addressed to the two wives of the Prophet when they made

²⁶ Miftahus Sholehudin, "Kontekstualisasi Konsep Keluarga Sakinah: Pergulatan Pemikiran Hukum Keluarga Dalam Tafsir Al Qur'an/The Contextualization of the Sakinah Family Concept: The Struggle for Family Law Ideas in the Interpretation of the Qur'an," *De Jure: Jurnal Hukum Dan Syari'ah* 12, no. 2 (2020): 201–2013, <https://doi.org/https://doi.org/10.18860/j-fsh.v12i2.8790>.



a mistake. Therefore, the verse above shows an input that can be addressed to all people. The verse above also regulates a person in terms of protecting himself and his family from the threat of hell. The person in question is a husband who is prohibited from maintaining family peace from various household problems. This verse also emphasizes that the husband also protects his wife and children from evil deeds.²⁷ Based on this, the punishment for perpetrators who carry out a series of forced marriage processes on children as stated in Law Number 12 of 2022 concerning the Crime of Sexual Violence is in line with God's prohibition against committing evil acts both for himself and his family.

The article on punishment for child marriage as stated in Law Number 12 of 2022 concerning the Crime of Sexual Violence is a regulatory instrument for violations of children's rights. The violation is sexual violence perpetrated by an adult against a child or a third person. Children in this case are made sexual objects and commercial objects. Child marriage is a common form of coercion and violence against children.²⁸ As the data shown in the previous discussion where child marriage shows an increase. Children are directly victims of exploitation by irresponsible parents. Although basically the state has protected children as regulated in Law Number 23 of 2002 concerning child protection in Article 13 which states that children are the caretakers of parents, guardians and other parties from all forms of discrimination, economic and sexual exploitation, neglect, injustice and other treatments do not seem to be able to completely eliminate cases of children and even tend to increase. Islamic law has actually also regulated how parents or guardians of children do not encourage children to marry as stated in the letter an-Nur verse 33 which reads:

And those who are not able to marry should maintain their purity so that Allah will enable them with His gifts. And the slaves that you have who want a covenant, you must make a covenant with them, if you know there is kindness in them and give them some of the wealth of Allah which He has given you. And do not force your female slaves to have sexual intercourse while they themselves desire chastity, because you seek worldly gain and whoever forces them, then indeed Allah is Most Forgiving, Most Merciful to them after they have been forced.

The verse above explains that children who are victims of marriage are people who are forcibly married.²⁹ The verse above does not explicitly mention the punishment for perpetrators of forcing child marriages. Nevertheless, Islamic law still regulates how to give punishment to perpetrators through ta'zir institutions with the aim of preventing the repetition of the same act in the future. Islam has actually set a severe punishment for perpetrators of violence against children, even though it is

²⁷ Imam Al Qurtubi, *Tafsir Al Qurthubi Jilid 18* (Jakarta: Pustaka Azam, 2016).

²⁸ Rebecca j Macy, Mary Giattina, Tamara H Sangster, Carmen Crosby, "Domestic Violence and Sexual Assault Services: Inside the Black Box."

²⁹ Quraish Shihab, *Tafsir Al Misbah* (Jakarta: Lentera Hati, 2009).



through marriage. Such marriages are vulnerable to the practice of forced marriages even if carried out by the parents.

Although forced marriage, if understood more deeply, can have benefits for the child or for the family, sometimes this type of marriage comes from the doctrinal roots of certain parties. On the other hand, Islamic law itself is familiar with the term wali mujbir which means a guardian who has the right to marry off children who are under his guardianship with related parties. People who can be said to be mujbir here are father, grandfather and lineage upwards. Shafi'i teachings at least provide the following conditions for ijbar: 1) Between women and men who are going to marry do not have feelings of hatred or hostility to each other; 2) Does not contain hatred towards parents who do matchmaking; 3) The person who will be matched should be someone who has a degree, level or comparable to the datu; 4) The dowry given should be equal to the dowry in general or what is known as the dowry mitsir.

The prospective husband who is the choice of parents or guardians is a person who has a good attitude and is submissive to the teachings of Allah SWT and will certainly not commit sexual violence or cause suffering to the prospective wife to be married. The right of ijbar owned by the guardian or parent of the child who is going to marry must be based on a sense of responsibility. Syafi'iyah said that the right of ijbar owned by the mujbir in this case is the father or grandfather or commonly referred to as the mujbir guardian.³⁰ Meanwhile, this mujbir guardian has the right or authority in terms of marrying off girls even without the consent of the parties concerned. This kind of marriage is considered legal by law. The right of ijbar owned by parents is a form of a sense of protection and responsibility from the father to his child who does not yet have the ability to carry out legal actions in terms of marriage. The Messenger of Allah taught in the practice of ijbar that before starting child marriage, it must be started with understanding and asking for good approval from the person concerned, as narrated by Ibn Abbas:

The Messenger of Allah (SAW) said: A widow has more right to herself than her guardian, while a virgin should be asked for permission about herself and her permission is her silence.

In addition to this, marriage is considered valid if the law and conditions are met. As for one of the important points in marriage is the sincerity of women and men to bind themselves in a household. For a man who will become a husband, sincerity in marriage becomes a symbol of firm feelings and a willingness to take responsibility for his wife's life. While the willingness of women who will become a wife becomes the embodiment of a household that is always surrounded by feelings of submission and obedience and always hopes for the pleasure of her husband as well as the pleasure in Islamic teachings.

On the other hand, Islamic law also recognizes the term Ikrah or what is commonly referred to as coercion in making choices, including those relating to marriage. In fiqh, it is stated that the practice of ikrah is what causes a marriage to be

³⁰ Mirkamali, "Legal and Jurisprudential Bases of Marital Rape Criminalization."



invalid. As stated by Wahbah az Zuhaili that ikrah in marriage is not valid, because marriage must be based on the willingness of both parties. If one of the parties experiences coercion in marriage, the marriage contract is damaged or a facade. Ikrah is a coercion to do something with a threat and this is seen as a violation of human rights. While ijbar is an act to do something on the basis of responsibility, in this case, a father. Both of these have the right dimensions in examining the concept of forced marriage to children which is a form of crime for Muslim communities in Indonesia.

Conclusion

Important findings in this article are the interpretation of the article on the punishment of children is carried out, implement the elements of punishment for child marriage as stipulated in the Act on the Crime of Sexual Violence and Islamic law on the article on the punishment of child marriage. Article policy with certain threats for perpetrators who commit psychological sexual violence through child marriage is carried out by giving criminal sanctions. In addition, psychological sexual violence can occur due to intimidation, threats and coercion. The bad possibility that occurs from child marriage is the occurrence of marital rape. The implementation of punishment for the perpetrators involved in the occurrence of child marriage with coercion is the use of criminal sanctions. Although there are threats of criminal sanctions for perpetrators, based on the data, not many cases have been submitted to the authorized officials who handle cases. This means that the regulations for criminalizing child marriage have not run optimally. The review of Islamic law on the article on criminalizing child marriage should be measured more deeply using the right of ijbar and ikrah as they should because both have different positions and meanings. The implications of these findings can be long-term trauma for children due to early marriage and the dysfunctional roles of related parties in the family sphere. To complement this research, it is hoped that further research can be focused on the response of stakeholders including the relevant government to respond to the findings in this research in depth and comprehensively so that it can be used as evaluation material in the formation of related laws and regulations, as well as similar research with different locations to make comparisons possible. .

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