

Article

# Forced Marriage as a Form of Sexual Violence Against Child Victims of Rape from a Human Rights Perspective

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**Abstract:** Forced marriage of child victims of rape is a phenomenon that places children in a position of double victimization, both as victims of sexual crimes and as subjects who lose their human rights to determine their future freely and with dignity. This research aims to examine forced marriage in the framework of sexual violence against children from the perspective of criminal law and human rights. In its approach, this research uses a normative juridical method with a statutory approach, conceptual approach, comparative approach, and case approach. The results show that forced marriage not only violates children's rights to protection from sexual violence as stipulated in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, but also violates the principles of non-discrimination, the best interests of the child, and the right to physical and psychological integrity as guaranteed in the Convention on the Rights of the Child (CRC) and other international human rights instruments. This research emphasizes the importance of legal recognition of forced marriage as a form of sexual violence and the need for a comprehensive policy in the handling and recovery of child victims.

**Keywords:** Child, Forced Marriage, Human Rights, Sexual Violence.

## 1. Introduction

Forced marriage of rape victims is a social phenomenon that contains significant legal and moral complexity. In several cases in Indonesia, victims of sexual violence do not receive the legal protection they deserve, instead, they are often directed to marry the perpetrator under the pretext of preserving the "family's honor" or achieving an amicable resolution through familial reconciliation. The social construction of honor and morality, unfairly imposed on the female body, particularly that of child, is one of the main reasons why the practice of forced marriage following rape continues to persist (Komnas Perempuan, 2022).

In this context, the law should serve as a counter-narrative to cultural norms that normalize violence, rather than allowing itself to be subjugated by misguided social pressures. Unfortunately, legal responses often tend to compromise with discriminatory local values, thereby creating space for covert sexual violence to persist under the guise of forced marriage (Wajdi, 2019).

When the state fails to provide maximum protection for children as a vulnerable group, it constitutes a serious violation of the fundamental principles outlined in the Convention on the Rights of the Child, which Indonesia ratified through Presidential Decree No. 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child. The convention explicitly emphasizes the best interests of the child as a fundamental principle in every policy and legal action involving children. In this context, it must be stressed that legal resolutions oriented solely toward superficial peace cannot be justified if they sacrifice justice and the dignity of child victims.

Even more concerning is the tendency toward legal evasion through loopholes in legislation and the use of customary or familial legal mechanisms that offer no protective

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power for victims (Marcoes, 2019). Criminal prosecution of perpetrators of sexual violence has not yet become a moral consensus within society, especially when the perpetrator is a family member, a community leader, or an individual with symbolic power. As a result, criminal law as a manifestation of public justice values loses its effectiveness when confronted with informal norms that dominate the private sphere. Therefore, this research becomes crucial in proposing the strengthening of criminal legal norms so that they are not subordinated to cultural dominance that prejudice the victims.

On one side, legal norms demand justice, protection, and recovery for the victim. On the other side, social norms pressure the victim to accept resolutions that normalize violence and strip them of their right to justice. The unequal power relations between the victim and the perpetrator, compounded by pressure from family, authorities, and even community leaders, make the practice of forced marriage one of the most systemic and covert forms of sexual violence (Bazemore & Umbreit, 2004).

The issue of forced marriage involving child victims of rape not only constitutes a violation of national and international law, but also highlights structural inequalities in the enforcement of criminal justice. The absence of a victim-centered perspective throughout various stages of the criminal justice process from reporting, investigation, to prosecution often results in the re-victimization of children who should be receiving protection (Suryandari, 2022).

In a case that occurred in Indonesia, namely the Medan District Court Decision Number 123/Pid.Sus/2022/PN Mdn, the panel of judges rejected a peace settlement proposed by the perpetrator's family, even though an unregistered (*siri*) marriage had previously taken place between the perpetrator and the victim. This ruling serves as an important precedent because the judges stated that "the marriage between the defendant and the victim does not automatically eliminate the criminal consequences of the defendant's actions, which fulfilled the elements of rape as regulated in Article 285 of the Indonesian Criminal Code and Article 6 letter b of the Law on the Crime of Sexual Violence (UU TPKS)." Therefore, this research is vital to open up space for a renewed interpretation of the role of criminal law as a tool of protection, and to encourage structural changes that ensure child victims are no longer victimized a second time by a system that is supposed to protect them.

The practice of forced marriage not only violates the law but also directly undermines the values of restorative justice, reinforcing the perpetrator's symbolic power over the victim's body through state-legitimized social institutions. Within the framework of human rights, this constitutes a failure of the state to guarantee non-derogable rights that must not be reduced under any circumstances including a child's right to protection from torture, inhumane treatment, and sexual exploitation (Munti, 2016). Within the framework of human rights, this constitutes a failure of the state to guarantee non-derogable rights, namely rights that cannot be reduced under any circumstances, including the child's right to protection from torture, inhuman treatment, and sexual exploitation.

This research will not only serve as an academic inquiry but also as a form of normative advocacy aimed at return the development of criminal law toward its true purpose: to protect the most vulnerable, to heal those who are wounded, and to challenge systems that remain silent in the face of violence disguised as tradition, morality, or the preservation of family honor. This is the moment when the law must resist outdated narratives and take the lead in promoting a form of justice that unequivocally stands with children as holders of the future, not as perpetual victims of a system that continues to neglect them.

## 2. Literature Review

Research on forced marriage as a form of sexual violence against child rape victims requires a comprehensive understanding of criminal law concepts, victim protection, and the social dynamics that influence law enforcement. Studies on forced marriage have been widely conducted by various scholars, indicating that this issue is both relevant and important to be examined from multiple perspectives.

Shinta Diva (2023), in her research titled "*Pemaksaan Pernikahan Terhadap Korban Tindak Pidana Kekerasan Seksual Sebagai Bentuk Pelanggaran Dalam Perspektif Viktimologi*" (Forced Marriage of Sexual Violence Victims as a Violation from a Victimological Perspective), highlights that the categorization of forced marriage as a form of sexual violence is based on the presence of verbal compulsion or through actions to enter into a marriage, which leads to coercion in marriage and can result in the breakdown of the household. This research shares a common object of discussion, namely the issue of forced marriage (Diva, 2023). However, the fundamental difference lies in the focus does not specifically examine children as victims of rape, whereas the present research centers precisely on that vulnerable group.

A similar research is found conducted by Mu'ammad Wafiuddin (2022) titled "*Undang-Undang Tindak Pidana Kekerasan Seksual tentang Pemaksaan Perkawinan Perspektif Feminist Legal Theory*" (The Sexual Violence Crime Law on Forced Marriage from the Perspective of Feminist Legal Theory). This study employs a feminist legal theory approach to analyze regulations concerning forced marriage (Wafiuddin, 2022). Although it shares a common subject matter forced marriage the research does not specifically address the condition of children who become victims of rape and are subsequently forced into marriage. This highlights a significant gap that the current study seeks to fill by focusing on the unique vulnerabilities and rights of child victims within this context.

Similarly, in the work of Dayu Dyana Zahir (2020) titled "*Pemaksaan Perkawinan Oleh Orang Tua Dalam Peraturan Perundang-undangan Di Indonesia*" (Forced Marriage by Parents in Indonesian Legislation), the research argues that current practices of forced marriage are not in accordance with Islamic law. The study also emphasizes the importance of regulating forced marriage in the Draft Law on the Elimination of Sexual Violence (RUU PKS), in order to cover aspects not yet addressed by the Child Protection Law and other existing legislation (Zahir, 2020). However, the study does not explicitly examine the situation of children who are rape victims and then coerced into marriage. This highlights a significant gap that the present research intends to fill by focusing specifically on the intersection of child victimization, sexual violence, and forced marriage within the legal and socio-cultural context of Indonesia.

From these three research, it can be concluded that while there is a similarities focus on the subject of forced marriage, there exists a gap or void in the literature concerning the specific discussion of children who are victims of rape and are subsequently coerced into marriage. This gap is what distinguishes and contributes to the present research, enriching the discourse and academic studies in the field of law and victim protection (Arief, 2018). By addressing this critical issue, this study aims to fill the void and provide a more comprehensive understanding of the legal and social implications surrounding forced marriage, particularly in cases involving child victims of sexual violence.

## 3. Proposed Method

There are several methods of approach, including the statute approach, conceptual approach, analytical approach, comparative approach, historical approach, philosophical approach, and case approach. In this research, the methods used are the statute approach, conceptual approach, comparative approach, and case approach. These approaches are employed to provide a comprehensive analysis of the issue, ensuring a well-rounded understanding of the legal frameworks, concepts, comparisons with other jurisdictions, and real-life case studies related to forced marriage and sexual violence against children.

#### 4. Results and Discussion

##### **Criminal Law Aspects of Forced Marriage Against Child Victims of Rape from a Human Rights Perspective**

###### **a. Criminal Acts of Sexual Violence in the Context Marriage**

In Indonesia, forced marriage of victims is often framed under the narrative of a "peaceful solution" or "restoration of family honor." In reality, forced marriage constitutes a violation of the right to a dignified life, as guaranteed by the values enshrined in Articles 28A through 28J of the 1945 Constitution of the Republic of Indonesia. Article 28B Paragraph (1) states that "Everyone shall have the right to form a family and to procreate based upon lawful marriage". In cases of forced marriage, it is crucial to assess whether a marriage conducted under coercion can truly be considered lawful. According to Law Number 16 of 2019, which amends Law Number 1 of 1974 on Marriage, the requirements for a marriage to be legally valid include the following:

- a. Conducted in accordance with the religion and beliefs of the parties;
- b. Registered according to the prevailing laws and regulations;
- c. Mutual consent from both prospective spouses;
- d. Minimum age for marriage is 19 years for both men and woman;
- e. Dispensation if the age is under minimum provision; and
- f. No prohibited familial relationship.

A life that is forced to be lived with a perpetrator of violence is not truly a life, but the continuation of suffering under a legal framework that is passive and compromising. Forced marriage reduces the meaning of the right to life to mere biological existence devoid of quality, lacking bodily autonomy, and stripped of any hope for the future. This means that the law is not only absent in providing protection, but also becomes complicit in institutionalizing structures of oppression by allowing the practice of forced marriage to persist, legitimized through various cultural, religious, and institutional forms.

Forced marriage is fundamentally prohibited and deemed illegal under Law Number 12 of 2022 on Sexual Violence Crimes (UU TPKS). The law explicitly states that forced marriage involving child rape victims constitutes a form of systemic sexual violence. Article 10 paragraph (1) of the UU TPKS affirms "Any person who forces another person into marriage, whether an adult or a child, shall be punished as a perpetrator of sexual violence". This provision makes it clear that forced marriage, even without any underlying justification, is already prohibited by law. Therefore, forcing a child victim of rape into marriage not only violates their bodily autonomy, but also constitutes revictimization a secondary abuse that cannot be justified under any legal framework. In parallel, Article 285 of the Indonesian Criminal Code (KUHP) reinforces this position by stating: "Whoever by force or threat of force compels a woman who is not his wife to have intercourse with him shall be punished for committing rape". However, in practice, rape perpetrators are often able to "escape" legal consequences by exploiting a forced marriage scheme under the guise of "family resolution" or preserving family honor. In such cases, criminal law not only fails to serve as a deterrent, but is also manipulated to sustain systemic injustice against the victim. This reality underscores the urgent need for legal reform and stricter implementation to ensure that the law upholds justice and prioritizes the protection and dignity of victims especially children rather than enabling cultural or familial pressures that perpetuate harm.

The contemporary criminal law perspective demands the recognition and fulfillment of victims' rights, including the right to recovery, the right to be free from discrimination, and protection from inhumane treatment. In this context, forcing a victim into marriage effectively reverses their role, making the victim appear as though they were the offender left to bear long-term social and psychological consequences. The legality of criminal law is also at stake in the context of forced marriage involving child victims of rape, as it fundamentally relates to the principle of legality, which is expressed in the maxim *Nullum Delictum Nulla Poena Sine Praevia Lege Poenali*, meaning "there is no crime and no punishment without a pre-existing penal law." This principle dictates that no act can be punished unless it is based on a criminal provision that existed before the act was committed, under the laws in effect at the time of the offense.

According to Article 285 of the Indonesian Criminal Code (KUHP), Anyone who, by force or threat of force, compels a woman who is not his wife to have sexual intercourse with him shall be punished for committing rape with a maximum imprisonment of 12 (twelve) years. In contrast, Article 6 letter b of the Law on Sexual Violence Crimes (UU TPKS) expands the definition of rape by stating rape is committed by a person who unlawfully places another under their control, either within or outside of marriage, and is punishable by a maximum imprisonment of 12 (twelve) years and/or a fine of up to Rp300,000,000.00 (three hundred million rupiah)". Therefore, perpetrators of rape under both of these articles are obligated to be criminally punished, not obligated to be forced to marry the victim.

The issue of coercion in forced marriage whether it occurs between a perpetrator and a rape victim or without the element of rape is addressed in Article 4 paragraph (1) of the Law on Sexual Violence Crimes (UU TPKS). This article states that forced marriage is categorized as a form of sexual violence, on the same level as other types of sexual violence such as non-physical sexual harassment, physical sexual harassment, forced contraception, forced sterilization, sexual torture, sexual exploitation, sexual slavery, and technology-facilitated sexual violence.

A perpetrator of forced marriage is therefore not considered innocent or exempt from accountability; rather, they are classified as a perpetrator of sexual violence because such acts directly violate the rights of victims rights which are protected by the state as part of fundamental human rights. Based on Article 10 Paragraph (1) of the Law on Sexual Violence Crimes (UU TPKS), perpetrators of forced marriage are subject to a maximum prison sentence of 9 (nine) years and/or a fine of up to Rp. 200,000,000.00 (two hundred million rupiah). These provisions provide a sufficient legal basis to demonstrate that forced marriage is prohibited by the state and is, in fact, a form of sexual violence. It also fulfills the elements of an act that can be classified as a criminal offense and subject to criminal sanctions according to the applicable regulations. The application of these provisions is crucial in the criminal justice process, as they define the elements of a crime and ensure the enforcement of appropriate legal consequences.

From the perspective of child protection, the act of forcing a child to marry the perpetrator of rape violates the principles of child protection law as outlined in Law Number 35 of 2014 on Child Protection, specifically in Article 15, which states that every child has the right to receive protection from:

- a. Sexual abuse;
- b. Sexual exploitation;
- c. Sexual violence; and
- d. Forced marriage.

Forced marriage is a form of revictimization, which is a process in which the victim of a crime, particularly sexual violence, experiences further psychological and social suffering due to improper handling by both the legal system and society. In cases of forced marriage, the victim not only fails to receive recovery but is also forced to live with the perpetrator of the sexual crime committed against them. This concept contradicts the spirit of victim protection as outlined in Law Number 31 of 2014 on Witness and Victim Protection. Article 5 states that "victims have the right to protection from threats, the right to confidentiality, as well as the right to psychological and social recovery."

The practice of forced marriage clearly violates all of these rights. Furthermore, the modern criminal justice system also acknowledges the importance of a restorative justice approach that centers on the victim. However, in the case of forced marriage, it is often a compromising approach that sacrifices the victim's rights, placing family honor above the individual's suffering. This phenomenon highlights a structural imbalance within the law enforcement system, which has not fully sided with victims of sexual violence, particularly children. This is exacerbated by patriarchal social norms and stigma against victims, which forces them to submit to pressure to marry the perpetrator in order to cover up the shame or protect the family's reputation.

### b. Comparative Study of International Law on Forced Marriage

To have more comprehensive legal perspective, it is also necessary to examine how other countries' legal systems address the issue of forced marriage against child victims of sexual violence. Countries like Canada, the United Kingdom, and Sweden provide progressive protection for victims by making forced marriage a distinct criminal offense. In Canada, under Section 293 (1) and (2) of the Criminal Code, it is stated that “anyone who forces or deceives someone into marriage, including a minor, can be sentenced to criminal punishment.” The United Kingdom applies the Forced Marriage (Civil Protection) Act 2007, which allows courts to issue Forced Marriage Protection Orders to protect victims. Furthermore, since 2014, forced marriage has also been criminalized under the Anti-Social Behaviour, Crime and Policing Act, with the possibility of a prison sentence. Sweden even explicitly prohibits all forms of child marriage and treats the perpetrators (including parents who force their children to marry) as criminal subjects. Sweden's approach strongly emphasizes the child's right to education, psychological development, and freedom to determine their future.

**Table 1.** Comparison of National Law and International Law

Aspect	Indonesia	Canada	UK	Sweden
<b>Existence of the Special Crime of Forced Marriage</b>	TPKS Law, but not as a pure criminal offense	Regulated in Criminal Code Articles 293.1 and 293.2	Regulated in the Forced Marriage (Civil Protection) Act 2007 and the Anti-Social Behaviour, Crime and Policing Act 2014	Explicit prohibition in national law
<b>Child Rights Protection</b>	Through the Child Protection Law	Very strong; the child's free will is highly respected	Very strong; Forced Marriage Protection Orders are available	Very strong; the right to education and child development is protected
<b>Criminal Sanctions for Perpetrators</b>	Still vague and dependent on proving sexual violence	Firm, with a prison sentence threat	Firm, with a criminal penalty of up to 7 years in prison	Firm, including for parents
<b>Philosophical Approach</b>	Based on child protection and human rights enforcement, but still compromising with local culture	Based on individual rights and gender equality	Based on children's rights and personal freedom	Based on children's rights as an absolute priority
<b>Non-Criminal Protection Instruments</b>	Mediation and victim rehabilitation	Victim protection programs and counseling	Forced Marriage Protection Orders	Social services must intervene

The explanation of the comparison table between Indonesia's national law and the legal systems in Canada, the UK, and Sweden shows a significant disparity in handling cases of forced marriage of child victims of sexual violence. In terms of the existence of a specific criminal offense regarding forced marriage, Indonesia has indeed recognized regulations concerning forced marriage through Law Number 12 of 2022 on Sexual Violence Crimes. However, forced marriage in national law does not stand as an independent criminal offense, but rather as one form of sexual violence, the elements of which must first be proven, such as the presence of force, threats, deceit, or persuasion.

In Canada, the UK, and Sweden, the protection of children's rights is strongly emphasized through legal policies that prioritize the free will of children and protect them from family or community pressure. In terms of criminal sanctions against perpetrators, Indonesian law only regulates the criminal penalties for perpetrators of forced marriage in the context of sexual violence in general, with its implementation depending on the proof of the elements of sexual violence.

If it viewed from the philosophical approach of each legal system, Indonesia is still striving to balance the protection of children's rights and respect for local cultural values, which in practice often leads to compromises on human rights principles. In contrast, Canada, the UK, and Sweden take a firm approach based on the universal principles of human rights, placing the child's right to choose and freedom from violence as rights that must be protected by the state without exception for culture or traditions. Based on the comparison table, it shows that despite progress in Indonesia's national regulations, compared to practices in Canada, the UK, and Sweden, the protection of child victims of sexual violence who are subjected to forced marriage in Indonesia still requires fundamental strengthening, both in the form of the creation of specific criminal offenses, effective protection mechanisms, and a shift in the legal paradigm towards a child-centered approach that prioritizes children's human rights that cannot be compromised.

Under national law, forced marriage should not only be viewed as a violation of the child's rights but also as a dual crime, namely sexual violence and forced marriage, both of which must be seriously processed by law enforcement authorities. Furthermore, from a moral legal perspective, forcing a child victim of rape to marry the perpetrator is not a form of restoration, but a betrayal of justice itself. The state must intervene not to reconcile the victim with the perpetrator but to restore the victim's rights in full and provide maximum protection from any form of further violence. Thus, both under international and national law, forced marriage of a child victim of rape cannot be justified under any circumstances, and the state has an obligation to take all necessary measures to prevent, punish, and restore the victim's rights in a framework of full respect for human dignity.

### **c. Forced Marriage Case Study in Indonesia**

Various cases in Indonesia show that the practice of forced marriage for victims of sexual violence, particularly children, still occurs despite the existence of positive legal provisions that explicitly prohibit it. The first case occurred in Medan in 2022, where a young girl became the victim of rape by a man with the initials MAA. Although the perpetrator had been detained by the Medan Police, the victim's family and the perpetrator later agreed to marry them through a customary (*siri*) marriage, which led to the release of the perpetrator from detention. This action received condemnation from the Ministry of Women's Empowerment and Child Protection (KPPPA), which emphasized that sexual violence against children is a criminal offense that cannot be stopped through reconciliation. This case highlights the weak understanding among law enforcement and the public that family reconciliation is not only legally inappropriate but also prolongs the victim's suffering.

A case more closely related to local customary practices occurred in Southwest Sumba, East Nusa Tenggara, in 2023. A young woman with the initials DN became a victim of the "kawin tangkap" practice, a form of forced marriage disguised as tradition. Although four perpetrators were eventually prosecuted under Article 328 of the Indonesian Criminal Code regarding kidnapping and Article 10 of Law No. 12 of 2022 on Sexual Violence Crimes (TPKS), this case highlights the need for a cultural legal transformation in a society that still justifies violence in the name of tradition.

The data on forced marriages has been compiled by the Ministry of Women's Empowerment and Child Protection (KPPPA) through an information system platform developed by the Ministry of Women's Empowerment and Child Protection, which is used for recording and reporting violence against women and children that occurs in Indonesia, both for Indonesian citizens and foreign nationals. This system is called the Online Information System for the Protection of Women and Children (SIMFONI PPA), which includes, among other things, the following.

**Table 2.** Data on Forced Marriage Cases of Child Victims of Rape in Indonesia (2020–2024)

Year	Number of Case	Victim's Age (Average)	Force to Marry (%)	Location	Perpetrator	Court Verdict (%)
2020	75	15 y.o	48%	Jawa Timur	Boyfriend (40%) Uncle (25%)	65
2021	89	14,8 y.o	52%	Nusa Tenggara Timur	Neighbor (35%) Stepfather (30%)	70
2022	102	15,2 y.o	50%	Jawa Barat	Boyfriend (50%) Teacher (20%)	68
2023	115	14,5 y.o	54%	Sulawesi Selatan	Uncle (30%) School Friend (30%)	72
2024	97 (until Nov)	14,7 y.o	49%	Kalimantan Barat	Neighbor (40%) Bio Father (20%)	75

The statistical data over the past five years shows that the practice of forced marriage of child victims of sexual violence in Indonesia remains a serious and recurring phenomenon. Based on reports gathered from various official sources, there is a trend of increasing cases being reported, with fluctuations in several key indicators. Analyzing this data reveals that although the number of perpetrators being sentenced has gradually increased, the practice of forced marriage still occurs at a significant proportion, ranging from 48% to 54% of all victims each year.

It is evident that the perpetrators of sexual violence leading to forced marriage of children are not strangers to the victims. In fact, it is people within the child's circle of trust who most often become the perpetrators. This pattern indicates that child protection efforts should not only focus on monitoring external parties, but also strengthen protection systems within the child's closest environment, including the family, school, and community. Furthermore, this data serves as a strong foundation for demanding improvements in legal policies and supervision of educational institutions and families, to ensure that the principle of the best interests of the child is truly implemented in child protection practices in Indonesia.

### **The Ideal Regulation of Forced Marriage of Child Victims of Sexual Violence from a Human Rights Perspective**

#### **a. The Urgency of Law Reform Placing Human Rights as a Key Pillar**

Forced marriage of child victims of sexual violence is a form of layered violence that not only affects the physical and psychological well-being of the victim but also creates long-term trauma and normalizes impunity for the perpetrator. This practice is fundamentally contrary to human rights principles, which require the state to guarantee the protection, respect, and fulfillment of children's rights, particularly from gender-based and sexual violence. In practice in Indonesia, there are still legal loopholes that allow for the possibility of marriage between perpetrators and child victims of sexual violence, often justified by reasons such as protecting family reputation or avoiding social shame. In some cases, investigators or community leaders even suggest marriage as a form of "peaceful resolution," which only increases the victim's suffering.

This represents a form of revictimization, which refers to actions or policies that exacerbate the trauma and harm already experienced by the victim, both directly and indirectly. Such practices contradict the principle of victim-centered justice in modern law, which places the victim's interests at the core of the criminal justice system. Within the framework of legal reform with a human rights perspective, criminal law must no longer function solely as a tool to maintain public order but must evolve into an active mechanism for protecting vulnerable individuals, particularly children. Criminal law must provide substantial protection, not just procedural safeguards. Therefore, the state must undertake comprehensive legal reform with concrete measures, such as the creation of a specific criminal offense regarding forced marriage of child victims of sexual violence.



This offense must be *lex specialis* and clarify that marital status cannot be used as a reason to remove criminal liability from the perpetrator of sexual violence. Additionally, the articles in the Criminal Code (KUHP) and Law No. 1 of 1974 on Marriage, which was amended by Law No. 16 of 2019, still leave room for child marriage through a marriage dispensation mechanism. This dispensation is often granted without deep consideration of the child's psychological condition, especially if the child is a rape victim. In fact, the Convention on the Rights of the Child (CRC), which has been ratified by Indonesia, states that every decision concerning children must prioritize the best interests of the child. In this context, the marriage dispensation can perpetuate the victim's suffering and turn them into a bargaining tool within a patriarchal system that prioritizes family honor over justice for the child.

The state must issue a firm policy that marriage is not an instrument for resolving criminal offenses, and in the context of sexual violence against children, it can even be considered as an extension of the crime that has occurred. The state, as the primary duty-bearer, must reorient its criminal law not only to ensure public order but to prioritize the protection of victims as vulnerable individuals. This conception requires, among other things, the following:

- a. Establish a specific criminal offense for forced marriage against child victims of sexual violence;
- b. Revision of articles in the KUHP and the Marriage Law that still allow for impunity for perpetrators;
- c. Emphasizing that marriage is not an instrument for resolving criminal cases, but may rather constitute a form of revictimization; and
- d. Tightening and abolishing the possibility of granting marriage dispensations for children, especially in the context of sexual violence.

In a constitutional context, the practice of forcing a child victim of sexual violence into marriage is also a violation of the 1945 Constitution of the Republic of Indonesia, particularly Article 28B paragraph (2), which states that "Every child has the right to life, to grow and develop, and has the right to protection from violence and discrimination." This provision emphasizes that the protection of children is not merely a sectoral policy issue but is a constitutional mandate that must be fulfilled by the state as the highest legal obligation. Therefore, the practice of forced marriage under the guise of resolving sexual violence is a denial of the child's constitutional rights and undermines the principles of a state governed by the rule of law, which is based on respect for human dignity.

Many countries have implemented legal reforms in this regard, one of which is Tunisia. National law clearly prohibits perpetrators of rape from avoiding punishment by marrying their victims, a clause that was previously common in countries with legal systems strongly influenced by patriarchal values. Morocco, after the tragic case of Amina Filali, a teenage girl who was forced to marry her rapist and later committed suicide, finally abolished Article 475 of the Penal Code, which granted impunity to perpetrators if they married their victims. Similar reforms have also occurred in Turkey and Lebanon. The lessons from these countries show that legal changes that favor victims of sexual violence are both possible and urgent, especially when the momentum from civil society aligns with the state's commitment to human rights protection.

In Indonesia, although there has been progress through the enactment of Law Number 12 of 2022 on Sexual Violence Crimes (UU TPKS), which recognizes and regulates forced marriage as a form of sexual violence, its implementation still faces structural and cultural challenges. The UU TPKS has indeed become an important milestone because it shifts the legal paradigm from a retributive approach to one that is more restorative and victim-centered. However, the existence of the UU TPKS must be supported by a comprehensive revision of other norms that still retain patriarchal logic, such as the marriage dispensation system in the Marriage Law, as well as the elimination of the narrative that marriage can be a peaceful solution to sexual crimes.

In this regard, the state is not only obligated to refrain from violations but also must take active steps to prevent and eliminate all forms of discriminatory practices and violence that affect children, especially in highly vulnerable situations such as sexual violence followed by forced marriage. Therefore, the urgency of legal reform in the context of forced marriage against child victims of sexual violence cannot be separated from the state's obligation to ensure the fulfillment of human rights, particularly for vulnerable groups. The ideal criminal law must reject any compromise on the violation of children's rights, must stand with the victims, and must serve as a tool for restorative justice, not justice that perpetuates inequality and violence.

#### **b. Recommendations for Legal Reform and a Comprehensive Human Rights-Based Protection Model**

The ideal regulatory model in addressing forced marriage against child victims of sexual violence should not be limited to the repressive aspect of criminal law but must integrate preventive, rehabilitative, and restorative approaches within a holistic victim protection system. Several concrete steps that can be recommended in the national legal reform include the following:

- a. Establish of a Specific Criminal Offense on Forced Marriage, as outlined in the UK's Forced Marriage (Civil Protection) Act 2007, which provides both criminal and civil instruments to protect victims swiftly and effectively.
- b. Implementation of Forced Marriage Protection Orders (FMPOs), a civil mechanism that allows the court to issue prohibitions against parties attempting to force a child into marriage. This mechanism is preventive and does not wait for the completion of criminal proceedings.
- c. Integration of Gender Equality and Child Rights Perspectives in all policy formulation and judicial practice processes. This is crucial to ensure that the law is not biased against perpetrators and does not sacrifice the will of the victim, especially young girls, who are often the object of sacrifice in conflicts over cultural norms and honor.
- d. Strengthening Prevention and Education Systems, such as training law enforcement officers in a victim-centered and human rights perspective, and establishing special units within the police and the prosecutor's office to handle forced marriage cases.
- e. Building an Integrated Victim Protection System, including the provision of safe houses, psychosocial services, and legal assistance. Collaboration between KPAI (Indonesian Child Protection Commission), Komnas Perempuan (National Commission on Violence Against Women), Komnas HAM (National Commission on Human Rights), LPSK (Indonesian Victim and Witness Protection Agency), and relevant ministries should be formalized in the form of a national framework for the protection of child victims of sexual violence.

Legal changes must also be accompanied by a change in societal paradigms. Without a shift in collective awareness, the law will remain a text that does not touch reality. Therefore, the state must play a leading role in:

- a. Develop detailed implementing regulations that focus on victim protection;
- b. Conduct a national campaign to emphasize that marriage is not a solution to sexual violence;
- c. Require gender sensitivity and child rights training for state officials; and
- d. Uphold the principle that a child's right to dignity, safety, and freedom from violence cannot be compromised, even by cultural, religious, or familial pressures.

In Indonesia, under Law No. 16 of 2019 concerning Amendments to the Marriage Law, although the minimum marriage age has been raised, there are still legal loopholes through the marriage dispensation mechanism in religious or state courts. Although the requirements for dispensation normatively demand urgent reasons and consideration of the child's best interests (best interest of the child), in practice, many dispensation decisions are made without considering the psychosocial impacts and long-term consequences for the victim. Moreover, in the context of sexual violence victims, this dispensation often legitimizes the imbalanced power dynamics between the victim and the perpetrator. This represents a systemic failure in fulfilling the state's obligations as a duty-bearer within the framework of human rights.

The establishment of a specific crime for forced marriage cannot be delayed as an instrument to strengthen the rights of victims and dismantle the culture of impunity. In addition to substantive legal aspects, it is crucial to enhance the institutional capacity of the state to detect, prevent, and address cases of sexual violence leading to forced marriages. Therefore, ongoing training on a child rights-based approach, trauma-informed practices, and gender-perspective legal approaches should be made a mandatory part of legal education systems and professional legal training in Indonesia.

The criminal justice system also needs to be restructured so that it not only punishes the perpetrator but also restores the dignity of the victim. In a restorative approach, the victim is placed at the center of the legal process, not merely as an object of proof. The state must provide alternative dispute resolution pathways based on restorative justice carefully and selectively, especially to create space for the victim's recovery in situations where formal legal processes may be too burdensome. However, this approach cannot be applied to perpetrators of sexual violence against children without considering the principles of accountability and genuine justice. Legal reforms also require the state to have the courage to shift the regulatory orientation from being offender-centered to victim-centered. This means that legal protection should not only be provided after a report or request from the victim but that the state should proactively intervene if there are indications of forced marriage practices.

With all the explanations provided, it becomes clear that legal reform is not just a process of changing norms, but a paradigm transformation. The state must move away from the old pattern of viewing sexual violence as a moral issue or family shame, and adopt an approach that treats children as holders of rights, with the state as the guarantor of protection. This paradigm requires a multi-level, interdisciplinary, and intersectoral approach, where law does not work in isolation but is connected with sectors such as education, health, social protection, and human development as a whole. By building a legal and protection system rooted in the values of substantive justice and respect for children's human rights, the state not only fulfills its international legal obligations but also reaffirms its commitment to the future of the nation by ensuring the protection and fulfillment of children's rights unconditionally.

## 5. Conclusions

The coercion of marriage constitutes a form of sexual violence that not only violates national criminal law as stipulated in Law Number 12 of 2022 concerning Sexual Violence Crimes and Law Number 35 of 2014 concerning Child Protection, but also fundamentally contradicts the principles of human rights. This practice infringes upon a child's rights to protection, justice, dignity, and freedom from torture, as guaranteed in Articles 28B and 28I of the 1945 Constitution of the Republic of Indonesia, as well as in various international human rights instruments, such as the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In the context of criminal law, the act of forcing a child who is a victim of sexual violence into marriage cannot be tolerated under the pretext of social or cultural resolution, as it essentially perpetuates the victim's suffering and denies their rights to recovery and justice.

The ideal regulation of this phenomenon must be grounded in a human rights-based approach that places the victim as the primary subject of legal protection. The state needs to strengthen the criminal justice system by affirming an absolute prohibition of all forms of forced marriage, particularly in the context of sexual violence against children. This should be achieved through more explicit legal norms, the elimination of legal loopholes, and the reform of law enforcement policies to be more victim-sensitive. Furthermore, there is a need for harmonization between national laws and international human rights standards, as well as active roles from institutions such as the National Commission on Violence Against Women (Komnas Perempuan), the Indonesian Child Protection Commission (KPAI), and the Witness and Victim Protection Agency (LPSK) to ensure that recovery, restorative justice, and psychosocial protection are genuinely realized. Thus, the law should not only serve as a tool for prosecuting perpetrators but also as an emancipatory instrument that empowers victims and liberates them from violence legitimized by discriminatory social norms.

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