

Legal Protection for Underage Rape Victims Who Experience Forced Marriage with the Perpetrator

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Abstract

Forced marriage, particularly involving underage victims of sexual violence, remains a pressing issue in Indonesia's legal and human rights landscape. Despite the enactment of Law No. 12 of 2022 on Sexual Violence Crimes, which criminalizes forced and child marriage—including those justified by cultural traditions—challenges persist in enforcement and victim protection. This study examines the legal safeguards available to child rape victims forced into marriage with their perpetrators, evaluates the effectiveness of Indonesia's legal system in addressing sexual violence, and explores necessary legal reforms to enhance justice for survivors. By applying a normative descriptive approach, this research identifies gaps in policy, law enforcement, and institutional support, emphasizing the need for stronger victim protection mechanisms, law enforcement consistency, and multi-sector collaboration to ensure comprehensive recovery and justice.

Keywords: *Forced Marriage, Child Marriage, Sexual Violence, Legal Protection.*



I. Introduction

Marriage is a sacred union, carried out with the intention of building a harmonious, loving, and supportive family. It is not merely the fulfillment of a vow but must be based on the mutual consent of both parties, given freely and without coercion, to ensure peace and security within the family. However, child marriage remains prevalent in Indonesia, influenced by cultural traditions, unplanned pregnancies, and religious interpretations that allow early marriage.¹ Marriage is recognized as a fundamental human right, protected by the state. According to Indonesia's Human Rights Law No. 39 of 1999, every individual has the right to form a family and continue their lineage through a legally recognized marriage, as outlined in Article 10. However, forced marriage, where one or both parties, particularly minors, are pressured into marriage, remains a major concern. Children are not yet capable of fully expressing their consent, making forced marriage a serious violation of individual autonomy. Indonesia's Marriage Law No. 1 of 1974, Article 6(1) clearly states that marriage must be based on the consent of both spouses, emphasizing the right to a life free from coercion.

Forced marriage is considered a form of sexual violence, as defined under Indonesia's Constitution and legal framework.² The 1945 Constitution (Article 28, Clause 2) guarantees that every child has the right to live, grow, and develop, as well as the right to be protected from violence and discrimination. Sexual violence is generally categorized into two forms: verbal violence, which includes threats and coercion, and physical violence, involving acts of force, assault, or rape.³ Forced marriage falls into the second category, as it involves coercion and leads to physical, emotional, and psychological harm. Law No. 12 of 2022 on Sexual Violence Crimes explicitly addresses child marriage, forced marriage under cultural justification, and coerced unions, recognizing the severe negative

¹ Sonny Dewi Judiasih, *Perkawinan Bawah Umur Di Indonesia. Beserta Perbandingan Usia Perkawinan Dan Praktik Perkawinan Bawah Umur Di Beberapa Negara* (Bandung: Refika Aditama, 2018).

² Adillah Srikandi Karim, "Pemaksaan Perkawinan Dalam Perspektif Tindak Pidana Kekerasan Seksual Menurut Undang-Undang Nomor 12 Tahun 2022," *Lex Administratum* 12, no. 1 (2023), <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/53082>.

³ Ryan Aldi Nugraha and Subaidi Subaidi, "Kekerasan Seksual Dalam Perspektif Dominasi Kuasa," *IJouGS: Indonesian Journal of Gender Studies* 3, no. 1 (July 29, 2022): 21–31, <https://doi.org/10.21154/ijougs.v3i1.3694>.

consequences for women. Victims often suffer depression, psychological trauma, social stigma, family conflicts, divorce, infidelity, and in extreme cases, suicidal tendencies due to loss of personal agency. Forced marriage can also lead to domestic violence and marital rape, as the marriage itself is rooted in coercion.⁴

In addressing sexual violence and related crimes, both preventive and repressive measures are necessary. These actions must be undertaken by society and the government, particularly law enforcement authorities. Efforts should include protecting victims from threats and harm caused by perpetrators, providing medical and psychological support for survivors, and ensuring fair and just legal proceedings to uphold the victims' human rights.⁵

Based on these concerns, the study focuses on three main research questions: How does the Indonesian legal system protect victims of child rape who are forced into marriage with their perpetrators? Is Indonesia's legal enforcement on sexual violence crimes effective? What legal measures should be taken to strengthen justice for victims of sexual violence in Indonesia? These questions aim to address the ongoing challenges of forced child marriage and the urgent need for stronger legal protections to safeguard victims from exploitation and injustice.

II. Methods

This study employs a normative descriptive method, focusing on an analysis of Indonesian laws and regulations regarding legal protection for underage rape victims. The research is supported by relevant jurisprudence and academic perspectives, sourced from journals and books.⁶

1. Types and Sources of Data

The types and sources of data used in this study are as follows:

a. Laws and regulations in Indonesia

- Law No. 1 of 2023 on the Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana);
- Law No. 35 of 2014, amending Law No. 23 of 2002 on Child Protection;

⁴ Sheila Fakhria and Rifqi Awati Zahara, "Membaca Marital Rape Dalam Hukum Keluarga Islam Dan Rancangan Undang-Undang Penghapusan Kekerasan Seksual (P-KS)," *Ijtihad* 37, no. 2 (2021): 15–24, <https://journals.fasya.uinib.org/index.php/ijtihad/article/view/105/53>.

⁵ Rodliyah, Widodo Dwi Putro, and R. R. Cahyowati, "Perlindungan Hukum Bagi Perempuan Dalam Sistem Peradilan Pidana Di Indonesia," *Prosiding Saintek* 3 (2021): 237–60, <https://jurnal.lppm.unram.ac.id/index.php/prosidingsaintek/article/view/228>.

⁶ Suratman and Philips Dillah, *Metode Penelitian Hukum* (Bandung: Alfabeta, 2013).

- Law No. 23 of 2002 on Child Protection;
- Law No. 16 of 2019, amending Law No. 1 of 1974 on Marriage;
- Law No. 1 of 1974 on Marriage; and
- Law No. 12 of 2022 on Sexual Violence Crimes.

b. Secondary Data Sources

Supporting materials obtained from literature related to the research topic, including online sources.

III. Result and Discussion

A. Legal Protection for Underage Victims of Rape Who Are Forced into Marriage with Their Perpetrators in Indonesia

Sexual violence remains a pervasive issue across the world, including in developed countries. This problem persists due to the unique vulnerabilities of victims, often rooted in power imbalances between perpetrators and their victims. These inequalities are exacerbated when one party has substantial control over the other, whether through access to resources, knowledge, financial standing, social status, or relationships structured around patron-client dynamics, such as parent-child, employer-worker, teacher-student, or community leader-citizen.⁷

Following the enactment of Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS), Indonesia officially recognized forced marriage as a form of sexual violence. This legislative change was crucial given the continued prevalence of forced marriages. According to a study by Kyja Noack-Lundberg, Aisha K. Gill, and Sundari Anitha, forced marriage occurs when one or both parties enter into a marriage without their full and informed consent.⁸ The issue is particularly severe in cases of child marriage, where children, by definition, lack the capacity to give legal consent. Forced marriage constitutes a severe violation of children's rights, as reflected in International Labour Organization (ILO) data, which recorded 22 million

⁷ Rini Fitriani and Marlina, "Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual Dalam Rumah Tangga," *Jurnal Mercatoria* 2, no. 1 (2009): 26–34, <https://ojs.uma.ac.id/index.php/mercatoria/article/view/672>.

⁸ Kyja Noack-Lundberg, Aisha K. Gill, and Sundari Anitha, "Understanding Forced Marriage Protection Orders in the UK," *Journal of Social Welfare and Family Law* 43, no. 4 (October 2, 2021): 371–92, <https://doi.org/10.1080/09649069.2021.1996083>.

cases of forced marriage globally in 2021. This figure marked a 42.86% increase compared to 15.4 million cases in 2016.

Forced marriage is classified as gender-based violence, as recognized by Indonesia's National Commission on Violence Against Women (Komnas Perempuan). The commission defines violence against women as any act that inflicts or is likely to inflict physical or psychological suffering. Before the enactment of Law No. 12 of 2022, forced marriage often found protection under the guise of local customs, cultural traditions, or parental authority. Many instances of forced marriage were arranged through matchmaking, with victims pressured into marrying someone they had never met or did not wish to marry.⁹ The situation is particularly egregious for victims of rape, who are frequently coerced into marrying their perpetrators.

Given these realities, feminist legal theory is essential for shaping a more just, inclusive, and gender-responsive legal system in Indonesia. The development of legislation must incorporate a gender-sensitive approach to prevent policies from disproportionately burdening or criminalizing women. The government must ensure citizens' rights across all aspects of life, including education, healthcare, and economic participation.¹⁰ The Sexual Violence Crimes Law (UU TPKS) stands as one of Indonesia's most progressive legislations, championing women's rights. As DPR RI Speaker Puan Maharani aptly stated during its enactment, "The passage of this law is a gift to all Indonesian women ahead of Kartini Day."

Article 10 of Law No. 12 of 2022 lays out specific criminal penalties for forced marriage, stating:

(1) Any person who unlawfully forces another, places them under their authority or another's, or coerces them into marrying either themselves or another person shall be convicted of forced marriage and sentenced to a maximum of 9 years' imprisonment and/or fined up to IDR 200,000,000.

While Article 10 represents a major legal advancement, implementation remains challenging. The high burden of proof regarding victims being "placed under authority" demands extensive legal scrutiny. Law enforcement officials must establish intent and coercion, yet evidence collection often

⁹ Dewi Bunga et al., "Praktik Pemaksaan Perkawinan Pasca Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual," *Jurnal Aktual Justice* 8, no. 1 (June 29, 2023): 47–62, <https://doi.org/10.70358/aktualjustice.v8i1.1029>.

¹⁰ Yanika Helena Sitanggang, Esra Labora Suriyani Br Nainggolan, and Abdul Rahman Maulana Siregar, "Teori Hukum Feminisme Dan Perlindungan Hukum Bagi Perempuan Di Indonesia," *Judge: Jurnal Hukum* 5, no. 4 (2024): 10–18, <https://journal.cattleyadf.org/index.php/Judge/article/view/1044>.

hinges on marriage certificates or family testimony, making psychological coercion or deception harder to expose. To counter this, expert testimony from psychologists and cultural anthropologists is critical in interpreting forced marriage practices disguised as customary traditions or arranged matches.

The article further clarifies three key forms of forced marriage:

(2) Forced marriage, as referred to in paragraph (1), includes:

- a. Child marriage;
- b. Forced marriage in the name of cultural practices;
- c. Forced marriage between a rape victim and their perpetrator.

Guaranteeing victims' rights to information, legal assistance, and psychological support requires collaboration among agencies to prevent neglect. The DPR RI Speaker's statement that this law is a "gift to women" must be matched by concrete action, such as technical guidelines for law enforcement and standard procedures for identifying vulnerable victims, facilitating immediate medical services, and establishing 24-hour crisis centers. Access disparities in remote regions can be addressed by local funding allocations from village budgets and regional funds, ensuring victims' transportation and rehabilitation needs.

Articles 65 and 67 of UU TPKS affirm victims' rights, particularly for persons with disabilities, outlining provisions for handling, protection, and recovery as detailed in Articles 68-70.

Handling Rights:

- a. Right to information about all legal processes and case outcomes.
- b. Right to access legal case documents.
- c. Right to legal assistance.
- d. Right to psychological support.
- e. Right to healthcare services, including medical examinations, treatment, and care.
- f. Right to relevant services and facilities based on victims' needs.
- f. Right to the removal of sexually explicit content in cases involving electronic media abuse.

Restitution, as an instrument for material and immaterial compensation, represents restorative justice, yet its actual enforcement remains weak. Courts frequently rule that perpetrators lack financial means, rendering restitution symbolic rather than practical. A special fund for

restitution and strict oversight mechanisms can enhance enforcement, alongside regional banking or government loan schemes enabling structured compensation payments.

Protection Rights:¹¹

- a. Information access on legal rights and available services.
- b. Access to protection service providers.
- c. Protection from threats, violence, or repeated abuse by perpetrators.
- d. Confidentiality safeguards for victims' identities.
- e. Protection from misconduct by law enforcement.
- e. Protection from job loss, educational barriers, or political discrimination.
- f. Legal immunity for victims and whistleblowers reporting sexual violence.

The Witness and Victim Protection Agency (LPSK) plays a key role in ensuring victims' safety and recovery. LPSK must actively provide physical and psychological security, as well as financial support for rehabilitation. Strengthening NGOs and legal aid clinics under LPSK will expand victim assistance networks, especially for persons with disabilities who often face exclusion from legal processes (Mastur, 2020).

Recovery Rights:

- a. Medical rehabilitation
- b. Mental and social rehabilitation
- c. Social empowerment
- d. Restitution and/or compensation
- e. Social reintegration

Legal protections for victims of sexual violence under Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS) include restitution, which holds perpetrators accountable for compensating victims' material and immaterial losses.¹² Restitution is determined through a final court ruling and can take four forms:¹³

¹¹ Yusuf Saefudin et al., "Tindak Pidana Kekerasan Seksual Dan Perlindungan Hukum Bagi Korban Kekerasan Seksual Di Indonesia," *Kosmik Hukum* 23, no. 1 (February 10, 2023): 24, <https://doi.org/10.30595/kosmikhukum.v23i1.17320>.

¹² Mastur Mastur, Syamsuddin Pasamai, and Abdul Agis, "Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual," *Journal of Lex Philosophy (JLP)* 1, no. 2 (December 19, 2020): 137–50, <https://doi.org/10.52103/jlp.v1i2.213>.

¹³ Nugroho Ahadi, Ali Masyhar Mursyid, and Cahya Wulandari, "Restitusi Dalam Tindak Pidana Kekerasan Seksual Di Indonesia Ditinjau Dari Perspektif Utilitarianisme," *Jurnal Esensi Hukum* 5, no. 2 (2023): 57–69, <https://journal.upnvj.ac.id/index.php/esensihukum/article/view/254>.

- a. Compensation for lost wealth or income due to the crime.
- b. Compensation for direct suffering resulting from sexual violence.
- c. Coverage of medical and psychological treatment costs.
- d. Compensation for other damages experienced by the victim.

Ensuring victims' rights requires an integrated monitoring system with quarterly reports, annual evaluations, and regulatory improvements informed by empirical data. The Ministry of Women's Empowerment and Child Protection should establish a public dashboard tracking key indicators like restitution success rates, the number of forced marriage cases tried, and victim satisfaction with services.¹⁴ Transparent data enhances law enforcement accountability and encourages victims to report their cases, ensuring substantive justice.

Before UU TPKS, legal protections for child victims, especially those forced into marriage after rape, were inadequate. Child Protection Laws focused on punishing perpetrators, but lacked comprehensive safeguards to prevent revictimization. Legal processes often exacerbate victims' trauma, preventing them from fully recovering and reintegrating into society.

Effective implementation of UU TPKS requires collaboration between the government, NGOs, and legal experts.¹⁵ According to Article 26, sexual violence victims and witnesses must receive legal and psychological support throughout all court proceedings. Partnerships with NGOs specializing in constitutional and psychological advocacy are crucial to ensuring victims' rights are upheld at every stage.

Victim support goes beyond legal guidance, it ensures victims are protected from negligence or rights violations during trials. Strengthening communication between law enforcement, prosecutors, and courts is essential for expediting case resolutions and preventing delays. Increasing public awareness of sexual violence victims' rights is equally critical, as social stigma often deters victims from reporting or seeking help.

Child victims of forced marriage post-rape rely on law enforcement's ability to apply child-friendly justice principles. Unfortunately, many

¹⁴ Karina Salsabilla, "Penegakan Hukum Terhadap Perempuan Dan Anak Sebagai Korban Kekerasan Seksual Perspektif Viktimologi," *Jurnal Kajian Hukum Dan Kebijakan Publik* 2, no. 1 (2024): 467–74, <https://jurnal.kopusindo.com/index.php/jkhkp/article/view/409>.

¹⁵ Rifqi Aditya, Donny Eddy Sam Karauwan, and Achmad Junaedy, "IMPLIKASI UNDANG-UNDANG TINDAK PIDANA KEKERASAN SEKSUAL (UU TPKS) TERHADAP PROSES PERADILAN PIDANA DI INDONESIA," *Kabillah: Journal of Social Community* 9, no. 2 (2024): 22–31, <https://ejournal.iainata.ac.id/index.php/kabillah/article/view/437>.

investigation and judicial procedures fail to address their psychological and emotional needs, worsening their trauma. Strengthening Women and Child Protection Units (PPA) within the police force and prosecution offices is crucial. Standardized procedures should include child-sensitive interview techniques, private examination spaces, and integrated psychological support. Trauma-informed law enforcement officers can help victims provide statements without fear or further harm.

Free legal assistance is another fundamental pillar of child victim protection. Many families lack knowledge of legal procedures or fear the costs of hiring attorneys, often leading to informal mediation or pressure from the perpetrator's family. Legal aid clinics specializing in sexual violence cases can bridge these gaps, providing counseling, representation, and pre-trial legal education.¹⁶

Community leaders have a pivotal role in dismantling cultural legitimacy around forced marriage. Religious figures, educators, and social activists in Jerili Village have demonstrated how interactive education programs, including group discussions, role-playing, and documentary screenings, can shift public attitudes on early marriage and sexual violence. A local study from Jerili Village's Statistics Bureau (BPS) found that 20% of marriages in 2023 involved minors, yet post-program evaluations showed a significant increase in youth awareness of the dangers of early marriage and sexual violence.

This community-driven model empowers survivors and undermines traditional matchmaking practices that enable forced marriage. Scaling this pilot program through long-term facilitator training in other villages could strengthen national enforcement of UU No. 12/2022 while ensuring children's rights are upheld at the grassroots.¹⁷

B. The Implementation of Sanctions in Law Enforcement of Sexual Violence Crimes in Indonesia is Appropriate

¹⁶ Ahmad Jamaludin, "Perlindungan Hukum Anak Korban Kekerasan Seksual," *JCIC: Jurnal CIC Lembaga Riset Dan Konsultan Sosial* 3, no. 2 (October 10, 2021): 1–10, <https://doi.org/10.51486/jbo.v3i2.68>.

¹⁷ Zainal Abidin Achmad et al., "Edukasi Pencegahan Kekerasan Seksual Dan Pernikahan Dini Bagi Remaja Desa Jerili Sebagai Upaya Mendukung SDGs Nomor 5," *Jurnal Pengabdian Masyarakat: Pemberdayaan, Inovasi Dan Perubahan* 4, no. 6 (2024), <https://jurnal.penerbitwidina.com/index.php/JPMWidina/article/view/988>.

Before the enactment of Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS), marriage was often seen as a way to nullify the crime of sexual violence, particularly in Indonesia. A 2020 quantitative study by the Gender Equality Barometer, conducted by the Indonesia Judicial Research Society (IRJS), found that out of 1,586 respondents who had experienced rape-related incidents, only 19.2% (305 cases) resulted in the perpetrator serving a prison sentence. Meanwhile, 39.9% (633 cases) were resolved through financial compensation, 26.2% (416 cases) ended with the victim marrying the perpetrator, and 14.7% were left unresolved.¹⁸

These findings highlight that before the passage of UU TPKS, families often forced victims to marry their rapists as a way to resolve the issue socially. Disturbingly, this practice led to the belief that marriage eliminated criminal responsibility, with perpetrators escaping punishment by simply marrying their victims. However, rapists should remain accountable for their crimes under national law. Below are several court decisions made before UU TPKS was enacted:

TABLE 1

Case Number	Mitigating Factors	Prosecution's Demand & Verdict
Case No.167/Pid.Sus/2020/PN Ktg	a. Defendant admitted guilt, expressed remorse, and vowed not to repeat the act. b. Defendant reconciled with the victim's family and married the victim.	Prosecution's Demand: 6 years' imprisonment and a fine of IDR 100 million , subsidiary 1 month. Verdict: 4 years' imprisonment and a IDR 10 million fine.

¹⁸ Muhamad Kevin Audi and Chepi Ali Firman Zakaria, "Perlindungan Hukum Bagi Korban Tindak Pidana Pemerkosaan Dihubungkan Dengan Undang-Undang Nomor 31 Tahun 2014 Tentang Perlindungan Saksi Dan Korban," *Bandung Conference Series: Law Studies* 2, no. 1 (January 16, 2022), <https://doi.org/10.29313/bcsls.v2i1.379>.

Case No.26-K/PM.II 09/AD/II/2019	a. Defendant confessed openly and acknowledged wrongdoing. b. Defendant promised not to repeat the offense. c. Defendant agreed to take responsibility and pledged to marry the victim. d. The defendant and victim's family reached a peaceful settlement. e. Defendant divorced his wife before proceeding with marriage to the victim.	Prosecution's Demand: 5 years' imprisonment and dismissal from employment. Verdict: 1 year 5 months' imprisonment and a IDR 100 million fine.
Case No.87/Pid.Sus/2020/PN Arm	a. Defendant openly admitted his actions. b. Defendant showed remorse. c. Defendant, his family, the victim's family, and the victim reached a settlement through marriage.	Prosecution's Demand: 6 years' imprisonment and a fine of IDR 100 million, subsidiary 3 months. Verdict: 3 years' imprisonment and a IDR 60 million fine.

Case	a. Defendant admitted	Prosecution's
No.482/Pid.Sus/2021/PN	guilt.	Demand: 6
Bkn	b. Defendant had no prior convictions.	years' imprisonment
	c. Defendant reconciled with the victim.	and a fine of IDR 100
	d. Defendant and the victim got married.	million, subsidiary 3 months.
		Verdict: 6 months' imprisonment and a IDR 1 million fine.

Sources:

Several rape and molestation cases resulted in sentences below the mandatory minimum outlined in Law No. 35 of 2014, which amended Law No. 23 of 2002 on Child Protection. Article 81 of this law states:

Article 81(1): "Anyone who violates the provisions under Article 76D shall be sentenced to a minimum of 5 years' imprisonment and a maximum of 15 years, with a maximum fine of IDR 5 billion."

Based on empirical data before the enactment of Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS), marriage between victims and perpetrators was frequently chosen as a resolution by both society and law enforcement authorities. A 2020 study by IRJS found that among 1,586 respondents who had experienced rape, 26.2% reported that their cases were resolved through marriage with the perpetrator. This practice not only normalized sexual violence but also diminished the perpetrator's criminal liability, as reconciliation, including marriage, was considered grounds for a lighter sentence. Court decisions such as Case No. 167/Pid.Sus/2020/PN Ktg, Case No. 87/Pid.Sus/2020/PN Arm, and Case No. 482/Pid.Sus/2021/PN Bkn contained verdicts far below the minimum threshold established in Article 81(1) of Law No. 35/2014 on Child Protection.

Analysis of these rulings indicates the application of "presumptive minimum" discretion according to the Hoel and Gelb sentencing model, where confessions of guilt, remorse, or reconciliation, including marriage with the victim, allowed for significantly reduced sentences. However, mandatory

minimum sentencing is imperative and cannot be negotiated through reconciliation or restitution, as outlined in Article 81(1) of Law No. 35/2014. Sentences below the five-year minimum reveal a stark inconsistency between legal provisions and actual judicial practice, weakening the deterrence function and signaling that sexual violence can be bargained down.¹⁹

Various rulings highlight severe psychosocial implications for victims. Forcing victims, especially children, to marry their perpetrators, when neither is emotionally or legally prepared, heightens the risk of repeated psychological and physical trauma.²⁰ The likelihood of Post-Traumatic Stress Disorder (PTSD) increases dramatically, with symptoms such as avoidance and flashbacks becoming more intense when victims must interact daily with their abusers.²¹ Marriages that originate from acts of violence only prolong suffering and deprive young girls of protection and a safe childhood free from the threat of ongoing abuse.²²

The reality of judicial implementation shows that sentences often fall well below the minimum five-year threshold mandated by Law No. 35/2014. An extreme example can be seen in Case No. 482/Pid.Sus/2021/PN Bkn, where the defendant was sentenced to only six months in prison with a fine of IDR 1,000,000. The stark contrast between legal norms and actual practice raises serious questions about the adequacy of legal instruments versus the strength of implementation on the ground. Without oversight mechanisms and coordination between legal institutions, legal provisions fail to reflect in judicial decisions.

The regulatory loophole that allowed marriage to be used as a tool to lessen sentences should have been eliminated with the establishment of UU No. 12/2022, which explicitly states that marriage between victims and perpetrators neither nullifies nor reduces criminal sanctions. Effective enforcement of this provision requires judicial training for judges and prosecutors on mandatory

¹⁹ Fatimatul Risna and Asep Suherman, "Perlindungan Hukum Terhadap Perempuan Dan Anak Korban Kekerasan Seksual," *Jurnal Kajian Hukum Dan Kebijakan Publik* 2, no. 1 (2024): 119–27, <https://jurnal.kopusindo.com/index.php/jkhkp/article/view/346>.

²⁰ Wawancara Yang Dilakukan Oleh IJRS Dengan Asril (Peneliti Lembaga Kajian Dan Advokasi Independensi Peradilan), Pada Selasa 28 November 2023, n.d.

²¹ Fitry Erlin and Icu Yuanda Sari, "Gejala PTSD (Post Traumatic Stress Disorder) Akibat Bencana Banjir Pada Masyarakat Kelurahan Meranti Rumbai Pesisir Pekanbaru," *Dinamika Lingkungan Indonesia* 7, no. 1 (2020): 17, <https://dli.ejournal.unri.ac.id/index.php/DL>.

²² Temy Andreas Habibie and Qurotul Uyun, "Model Intervensi Islam Dalam Penanganan Gejala Gangguan Stress Pasca Trauma Pada Orang Tua Yang Memiliki Anak Sebagai Korban Kekerasan Seksual," *Journal of Islamic and Contemporary Psychology (JICOP)* 3, no. 1s (February 28, 2023): 221–30, <https://doi.org/10.25299/jicop.v3i1s.12363>.

minimum sentencing, as well as stronger coordination between civil and religious courts to prevent strategic divorces used to manipulate legal outcomes.²³ Ensuring victim protection and imposing meaningful consequences on perpetrators can only be achieved through clear regulations and consistent law enforcement.

C. The Struggle to Enforce the Law on Sexual Violence in Indonesia

Sexual Violence Crimes legislation in Indonesia was first proposed in 2012 by Komnas Perempuan under the initial name RUU PKS (Draft Law on the Elimination of Sexual Violence). The bill was first discussed in parliament on Wednesday, May 25, 2012, and officially included in the National Legislation Program (Prolegnas) in 2016. In June 2016, the government and parliament agreed to place RUU PKS among the top 10 priority bills in the Prolegnas Priority list.

Between 2016 and 2019, RUU PKS faced numerous obstacles, including public demonstrations both supporting and opposing the bill. This culminated in 2018, when the 2014-2019 parliament failed to pass the bill. In 2020, RUU PKS was removed from the 2020 Prolegnas list, only to be reinstated in the 2021 Priority List following an agreement between Minister of Law and Human Rights Yasonna Laoly and parliament. At this stage, RUU PKS was renamed RUU TPKS (Draft Law on Sexual Violence Crimes). After nearly 10 years of waiting, RUU TPKS was finally passed into law as UU No. 12 of 2022 on Sexual Violence Crimes.

Before the passage of UU TPKS, sexual violence cases in Indonesia were scattered across multiple separate laws, including the Criminal Code (KUHP), Child Protection Law, Electronic Information and Transactions Law (UU ITE), and Marriage Law. This fragmentation led to inconsistent case handling, making it difficult to accommodate new forms of sexual violence, such as electronic and social media-based sexual violence.²⁴

²³ Adrian Hoel and Karen Gelb, *Sentencing Matters: Mandatory Sentencing* (Victoria: Sentencing Advisory Council, 2008).

²⁴ M. Chaerul Risal, "Perlindungan Hukum Terhadap Korban Kekerasan Seksual Pasca Pengesahan Undang-Undang Tindak Pidana Kekerasan Seksual: Penerapan Dan Efektivitas," *Al Daulah : Jurnal Hukum Pidana Dan Ketatanegaraan*, June 23, 2022, 75–93, <https://doi.org/10.24252/ad.v1i2.34207>.

Sexual violence is a fundamental human rights violation, depriving individuals of their freedom to choose, including the right to consensual marriage. The state must prioritize protections for sexual violence victims, ensuring the enforcement of human rights, particularly women's rights in Indonesia. Although the country now recognizes and regulates certain forms of sexual violence, significant limitations remain due to external factors, such as cultural traditions, generational customs, and local customary laws.

Efforts to create a violence-free environment cannot succeed without community involvement, as government actions alone are insufficient. Public participation is essential to maximizing the impact of national initiatives. UU No. 12 of 2022 on Sexual Violence Crimes serves as a foundational legal framework, aiming to fill previous gaps in law enforcement. The 2022 law sets specific criteria for identifying forced marriage cases, including:²⁵

- a. Abuse of power to enforce marriage.
- b. Use of violence, threats, deception, or psychological coercion.
- c. Circumstances preventing an individual from providing genuine consent to marriage.

Encouraging or persuading someone to marry themselves or under their guardianship should already be considered an attempt under Article 17 of Law No. 1 of 2023 on the Criminal Code (KUHP), which defines criminal attempts as follows:

Article 17(1): "A criminal attempt occurs when a perpetrator's intent is evident through the commencement of an act aimed at committing a crime. However, the act remains incomplete, does not achieve its goal, or fails to produce illegal consequences, not solely due to the perpetrator's own will."

Article 17(2): "An act qualifies as an attempt when: a. The action is intended or directed toward committing a crime; and b. The action directly has the potential to result in the targeted crime."

Sentences for forced marriage include up to nine years' imprisonment and/or a fine of IDR 200 million. However, this presents a legal loophole, as the law does not specify a minimum sentence. Even if a perpetrator merely intended to arrange a forced marriage but did not finalize it, they should still be categorized as committing a criminal attempt under KUHP.

²⁵ Deybi Santi Wuri and Anak Agung Istri Ari Atu Dewi, "PEMAKSAAN PERKAWINAN SEBAGAI FAKTOR TERJADINYA KEKERASAN SEKSUAL DALAM RUMAH TANGGA DITINJAU DARI PERSPEKTIF HUKUM PIDANA INDONESIA," *Kertha Wicara: Journal Ilmu Hukum* 9, no. 5 (2020): 1–12, <https://ojs.unud.ac.id/index.php/kerthawicara/article/view/58896>.

Under Law No. 35 of 2014, Article 76D applies to rape (sexual intercourse), while Article 76E addresses sexual molestation, both mandating a minimum sentence of five years' imprisonment. Marriage between a rape perpetrator and victim should never serve as grounds for reducing punishment, and judges must apply strict sentencing principles.

Ambiguities regarding sentence reductions for sexual violence cases raise concerns. According to Spohn, irrelevant factors, such as race, ethnicity, gender, religion, sexual orientation, and economic status, must not influence judicial decisions. Relevant factors include the severity of the victim's injury, weapon involvement, and the perpetrator's prior criminal record.

Beyond the legal vulnerability of perpetrators receiving reduced sentences, victims of sexual violence also face social discrimination and are often dismissed or stigmatized by their communities. Victims must navigate societal myths, including moral judgments that classify women into "good" and "bad" categories. Survivors of sexual violence are often wrongfully labeled as "bad women" simply because they engaged in sexual activity, even though it was non-consensual.

Addressing this societal challenge requires collective action to ensure victims are recognized as survivors of criminal acts rather than stigmatized individuals. Komnas Perempuan has identified various forms of sexual violence that qualify as criminal offenses based on 15 years of monitoring (2005-2015):²⁶

- a. Rape
- b. Sexual intimidation, including threats or attempted rape
- c. Sexual harassment
- d. Sexual exploitation
- e. Sex trafficking
- f. Forced marriage, including prolonged divorce refusal
- g. Forced pregnancy
- h. Forced abortion
- i. Forced contraception and sterilization
- j. Sexual torture
- k. Cruel and inhumane punishment with sexual elements
- l. Culturally ingrained harmful sexual practices that discriminate against women

²⁶ Eko Nurisman, "Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022," *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (May 31, 2022): 170–96, <https://doi.org/10.14710/jphi.v4i2.170-196>.

m. Sexual control, including discriminatory morality and religious regulations

Legal Protection for Underage Rape Victims Forced into Marriage with the Perpetrator in Indonesia

Sexual violence remains a major issue worldwide, including in developed countries. This persists due to the unique vulnerabilities of victims, particularly the severe imbalance of power between perpetrators and survivors.²⁷ In many cases, perpetrators hold control over victims through resources, knowledge, financial dependency, social status, or feudal relationships such as parent-child dynamics, employer-worker hierarchies, teacher-student interactions, or community leader-resident influences.

Since the enactment of Law No. 12 of 2022 on Sexual Violence Crimes, Indonesia has officially recognized forced marriage as a form of sexual violence due to its widespread occurrence. Scholars like Kyja Noack-Lundberg, Aisha K. Gill, and Sundari Anitha have defined forced marriage as any marriage conducted without the consent of one or both parties. This categorization also applies to child marriage, given that children cannot legally or ethically give valid consent. According to the International Labour Organization, approximately 22 million individuals worldwide were victims of forced marriage in 2021, marking a 42.86% increase compared to 15.4 million cases reported in 2016.

Forced marriage falls under gender-based violence, as noted by Indonesia's National Commission on Violence Against Women (Komnas Perempuan), which defines violence against women as any act that causes physical or psychological suffering to women, including children. Historically, forced marriage was legally shielded by customary law, cultural traditions, or parental authority, preventing intervention. Many forced marriages occur through arranged matchmaking, often involving minors who are forced to marry individuals they do not know or wish to be with. Moreover, rape survivors frequently become victims of forced marriage, further compounding their trauma.

Given these realities, feminist legal theory plays an essential role in Indonesia's legal reforms, ensuring that legislation is more just, inclusive, and responsive to gender-based injustices. A gender-sensitive approach to policymaking is crucial in preventing laws that disproportionately target or criminalize women. The government must safeguard individual rights across all aspects of life, including

²⁷ Dinar Mahardika and Erwin Aditya Pratama, *Perlindungan Hukum Terhadap Korban Perkosaan Dalam Perspektif Psikologi Hukum* (Yogyakarta: Tanah Air Beta, 2020).

education, healthcare, and economic opportunities. Law No. 12 of 2022 stands as a landmark achievement, advocating for Indonesian women's rights. DPR Chairwoman Puan Maharani described its enactment as a "gift for all Indonesian women", coinciding with Kartini Day celebrations.

Legal Framework and Challenges in Implementation

Under Article 10 of Law No. 12 of 2022, the criminalization of forced marriage is explicitly outlined:

"Anyone who unlawfully coerces or places an individual under their control or another party's authority to enter or tolerate a marriage, either with them or another individual, shall be sentenced to up to nine years in prison and/or fined up to IDR 200,000,000 (approx. USD 13,500)."

The existence of Article 10 marks significant progress, yet implementation remains challenging. Establishing proof of "being placed under control" requires further legal review to help law enforcement objectively demonstrate coercion. In many cases, court rulings heavily depend on marriage certificates or family statements, making psychological pressure or manipulation difficult to prove. Expert testimony from psychologists and cultural anthropologists is essential for interpreting hidden coercion within traditional customs or matchmaking norms.

Additionally, Article 10(2) provides a more detailed categorization:

- 1) Child marriage
- 2) Forced marriage justified by cultural practices
- 3) Forced marriage between a rape victim and the perpetrator

Ensuring victims have access to information, legal aid, and psychological assistance requires collaboration between institutions to prevent victims from being neglected. The DPR leadership's declaration that the law is a "gift for Indonesian women" must be followed by technical guidelines for police, prosecutors, and courts. Standard procedures should include victim identification, rapid referral to medical services, and 24-hour crisis centers. Addressing gaps in remote areas necessitates village fund allocations and local government budgets to support victim transportation to recovery services.

Law No. 12 of 2022 also guarantees victims' rights to protection and recovery, as outlined in Articles 65-70. Victims, including those with disabilities, are entitled to legal, medical, psychological, and social assistance, ensuring comprehensive rehabilitation.

Victims have the right to:

- 1) Receive information on legal processes and case progress

- 2) Obtain official case documentation
- 3) Access legal services and psychological support
- 4) Receive medical treatment and rehabilitation
- 5) Secure personalized support facilities
- 6) Request the removal of sexually explicit content in digital cases

While restitution is mandated, implementation remains weak. Courts often declare perpetrators financially incapable of paying compensation, rendering restorative justice symbolic rather than effective. Establishing a restitution fund and monitoring compensation execution would strengthen enforcement. Cooperation with financial institutions, such as government credit unions, could introduce installment-based compensation models, ensuring victims receive meaningful support.

For victim protection, the law guarantees:

- 1) Access to information and protection services
- 2) Protection against threats, violence, and repeated abuse
- 3) Confidentiality of personal identity
- 4) Safeguards against discriminatory treatment by authorities
- 5) Security against loss of employment, education, or political rights
- 6) Legal immunity from civil or criminal prosecution related to sexual violence reports

The Witness and Victim Protection Agency (LPSK) must take a proactive role in facilitating protection and recovery. Its legal mandate to provide physical safety, psychological support, and financial assistance must align with victims' rights under Law No. 12 of 2022. Expanding partnerships with legal aid organizations and NGOs can improve victim assistance, especially for disabled survivors often marginalized in legal processes.

Victims are also entitled to long-term recovery, which includes:

- 1) Medical rehabilitation
- 2) Mental health counselling
- 3) Social empowerment
- 4) Restitution or compensation
- 5) Social reintegration programs

Eliminating Victim-Blaming and Strengthening Protection Systems

One major obstacle in eradicating sexual violence is society's tendency to blame victims. Many continue to argue that sexual violence occurs due to the victims' own mistakes, which obscures accountability and perpetuates discrimination. This phenomenon, known as "blaming the victim," was coined

by American sociologist William Ryan, who described it as a societal mechanism for justifying injustice by finding faults in victims rather than perpetrators.

Additionally, lack of resources in remote areas exacerbates victims' struggles. Many regions lack dedicated protection units like UPTD-PPA, preventing survivors from accessing legal and psychological assistance. The scarcity of trained psychologists and gender specialists in rural areas, particularly in 3T (Tertinggal, Terdepan, Terluar) zones, significantly hinders effective implementation of Law No. 12 of 2022.

Since Komnas Perempuan initiated the draft bill in 2012, Indonesia's legislative process took almost a decade before Law No. 12 of 2022 was finally ratified. Its passage marked an historic step forward, yet enforcement demands continued government action through institutional synergy and public education to ensure victims are truly protected.

IV. Conclusion

The legal treatment of child victims of forced marriage has seen substantial progress following the enactment of Law No. 12 of 2022, which explicitly criminalizes forced marriage, including those justified by cultural traditions or imposed after sexual assault. Article 10 of the Sexual Violence Crimes Law (UU TPKS) categorizes forced marriage as a criminal offense, carrying a maximum sentence of nine years' imprisonment and/or a fine of IDR 200 million. It also affirms that child marriage and forced matchmaking constitute forms of sexual violence. Victim rights, outlined in Articles 65–70, expand recovery measures, guaranteeing access to legal aid, medical and psychological assistance, and social reintegration. Additionally, restitution, as the perpetrator's obligation to compensate for material and immaterial damages, represents an essential step in ensuring restorative justice. However, limited access to UPTD-PPA (regional women's and children's protection units) and the shortage of gender specialists in 3T regions (underdeveloped, frontier, and outermost areas) continue to hinder comprehensive protection efforts. Multisectoral collaboration among government institutions, NGOs, and local communities is crucial in ensuring child victims receive adequate support, protection, and recovery services.

The practice of marriage as a mechanism to reduce sentencing for sexual violence perpetrators has consistently perpetuated injustice for victims, as evidenced by court rulings imposing sentences below the mandatory minimum under the Child Protection Law (Article 81(1) of Law No. 35 of 2014). The

presumptive minimum discretion exercised by judges has significantly weakened deterrence, especially in cases where peace agreements, including forced marriages, conceal potential recurring violence and severe trauma (PTSD). IRJS (2020) statistics reveal that only 19.2% of perpetrators were sentenced to prison, while 26.2% of cases were "resolved" through forced marriage. The enactment of Law No. 12 of 2022 effectively closes the legal loophole allowing marriage to mitigate sentencing, but its effectiveness depends on law enforcement's understanding of mandatory minimum penalties and consistent application without cultural compromises. Comprehensive training for judges, prosecutors, and synergy between civil and religious courts is necessary to reinforce strong punitive measures, ensure substantive justice for victims, and emphasize that sexual violence cannot be negotiated.

The legislative journey of the Sexual Violence Eradication Bill (RUU PKS) to becoming Law No. 12 of 2022 highlights that the process of establishing an integrated legal framework requires extensive time. Beginning with Komnas Perempuan's initiative in 2012, its submission to the National Legislation Program (Prolegnas) in 2016, followed by political challenges and protests from 2016 to 2019, led to its rebranding as the Sexual Violence Crimes Bill (RUU TPKS) in 2021, culminating in its final ratification in 2022. The previous legal inconsistencies, spanning the Criminal Code (KUHP), Child Protection Law, Electronic Information and Transactions Law (ITE), and Marriage Law, often failed to comprehensively address sexual violence, including digital-based forms. Cultural, traditional, and customary legal gaps continue to enable forced marriages, while victim-blaming stigmas worsen survivors' conditions. Successful implementation of UU TPKS requires coordinated efforts across law enforcement agencies (police, prosecutors, and courts), expansion of UPTD-PPA nationwide, and public empowerment through human rights education. A gender-sensitive approach to policy-making, along with active collaboration between NGOs and local communities, is imperative to ensure consistent protection, effective law enforcement, and social paradigm shifts regarding sexual violence.

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