

The Eliminating Forced Marriage Through the Law: Effectiveness and Social Urgency

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ABSTRACT

This article discusses the law's effectiveness and urgency in eliminating forced marriage in Indonesia. This research is qualitative research with a legal effectiveness approach. The primary data in this research is quantitative data from previous research that discussed the phenomenon of forced marriage. Secondary data consists of related laws and regulations, journals, and books. The research results show that legal regulations regarding the rejection of forced marriage have been regulated in various favorable laws in Indonesia but have not shown a significant influence in reducing the high rate of forced marriage. It is for two reasons. Firstly, there are still overlapping legal regulations regarding forced marriage, namely between the marriage dispensation article (UUP) and the article prohibiting child marriage (UU PKS). Second, the root of the problem of forced marriage lies in social factors, like a weak economy and a low level of public education.

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1. INTRODUCTION

On April 12, 2022, the People's Representative Council (DPR) of the Republic of Indonesia passed Law No. 12, 2022, concerning Crimes of Sexual Violence (TPKS Law). This law is a complementary regulation to previous legal regulations and is the government's responsibility to prevent and take action against crimes of sexual violence (Nurisman,2022).

In one of the articles, it is stated that one of the criminal acts of sexual violence is the act of forced marriage. Furthermore, Article 10 Paragraph 2 of the PKS Law states that what includes acts of forced marriage are child marriages, forced marriages in the name of cultural practices, and forced marriages between victims and perpetrators of rape. Research in the field of forced marriage has increased in recent decades. This reveals harmful practices' hidden and unreported nature and the poor response to victims seeking intervention (Gill,2014; Idriss,2022).

Discussing forced marriages, Indonesia has various regulations to prevent these marriages. Among them are contained in the 1974 Marriage Law, which regulates the conditions for marriage and the age limit for marriage. The 1974 UUP Article 6 states, "Marriage must be based on the consent of the prospective bride and groom." Furthermore, in the Compilation of Islamic Law (KHI), Article 16 Paragraph 2 that "The form of consent for the prospective bride can be in the form of a firm and concrete statement in writing, verbally or by gesture but can also be in the form of silence in the sense as long as there is no firm refusal." The requirement for the consent of the bride and groom in this regulation shows that the state wants a marriage to occur without coercion from other parties.

Likewise, the regulation regarding the age limit for marriage in the 1974 UUP has been revised through Law No. 16 of 2019 concerning the age limit for marriage. If previously in the UUP, the age limit for a person to marry was 19 for men and 16 for women, then in Law Number 16 of 2019, the age limit for marriage between men and women is the same, namely 19 years.

Restricting the marriage age is the government's effort to reduce the number of child marriages and forced marriages in Indonesia (Wahyudi & Prastiwi,2022). Despite this, the number of forced marriages continues to increase globally and nationally. Therefore, it is hoped that the existence of Law No. 12 of 2022, which is relatively new and specifically regulates criminal acts of sexual violence, will be a breath of fresh air in preventing criminal acts of sexual violence from occurring.

Based on this background, this article tries to answer the formulation of the problem related to how effective the previous legal regulations and the urgency of the latest law are in preventing forced marriages that occur in Indonesia.

2. METHODS

This research is qualitative research with a legal effectiveness approach. The primary data in this research is quantitative data from previous research that discussed the phenomenon of forced marriage. Secondary data consists of related laws and regulations, journals, and books. This study adopted a normative approach, precisely aligned with legal studies. This approach involved library studies, where researchers delved into existing legal substance rules encompassing statutory and Islamic laws. The process entailed studying, understanding, and examining these legal provisions to inform the research.

3. RESULTS AND DISCUSSION

3.1. Forced Marriage: Juridical and Sociological Overview

Forced marriage is a situation where a person has been forced to marry without consent. As stipulated in the joint general recommendations of the UN Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee on the Rights of the Child (CRC), child marriage is considered a form of forced marriage, considering that one and both parties cannot carry out/disclose with full consent, accessible, and based on adequate information (Unicef,2021).

Indonesia is one of the countries that ratified the results of the CEDAW convention, so the formation of legislation must be in line with the results of the convention. Regarding forced marriage, in terms of legal regulations, Indonesia has passed various laws and regulations that reject the practice of forced marriage. These regulations include the Marriage Law (UUP), the Compilation of Islamic Law (KHI), the Child Protection Law, and most recently, the Sexual Violence Crime Law (UU PKS).

Through the TPKS law, it is regulated in more detail that what is included in forced marriages consists of child marriages, forced marriages in the name of cultural practices, or coercion of victims and perpetrators of rape (article 10, paragraph 2). Regarding child marriage, the UUP and KHI have stated firmly that child marriage is prohibited. The regulations state the age limit for marriage. UUP 1974, revised through Law No. 16 of 2019, concerning the age limit for marriage, a person may marry if he is 19, male or female.

That is in line with the spirit of child protection as stated in Law No. 35 of 2005 concerning amendments to Law Number 23 of 2002, which states that a child is someone who is not yet eighteen years old. Thus, every person not yet 18 years old is still considered a child and a year later can enter into a legal marriage from a religious and state perspective.

Different from previous legal regulations, the PKS Law comes more firmly. The act of forcing someone to enter a marriage is criminal. In Article 10, paragraph 1 of the TPKS Law, it is stated that "Every person unlawfully forces, places a person under his or another person's authority, or abuses his power to perform or allow marriage to be carried out with him or with another person, shall be punished for forced marriage, with a maximum imprisonment of 9 (nine) years and a maximum fine of IDR 200.000.000 (two hundred million rupiah)" (Rochim,2011). These criminal provisions also answer various studies that state that the weakness of the Marriage Law in preventing forced marriages, in this case, child marriage, is that there are no definite criminal sanctions (Rochim,2011). The absence of criminal sanctions causes the rule of law to be weak and difficult to implement.

On the other hand, the views of fiqh scholars regarding forced marriages have also begun to develop, where Islam recognizes the concept of *wali mujbir*, which allows forcing their children to marry or marry off their children without the knowledge of the child (Khoiruddin,2020). But in a further view, as put forward by Ibn Taimiyyah, Through his thoughts in the Majmū' Fatāwā, he argued that marrying a woman to a man she does not like is contrary to *uṣūl* and common sense (Taimiyah,1995). Scholars from the Ḥanafīyyah al-Sarkhāsī school of thought, in their book *al-Mabsūṭ*, support Ibn Taimiyyah's statement that women can decide on their partner or companion (al-Sarkhāsī,1993). Even al-Nawawī, a cleric from the al-Syafī'īyyah

school of thought, has this opinion regarding forcing women who have reached puberty to marry (al-Nawawī,1996). These are the newer views of Islamic law.

From this explanation, the voluntary element is essential in implementing a marriage with the hope that it can become an eternal marriage as religion and state law require. However, in practice, some marriages occur without the consent of the bride and groom (forced marriages) (Izzah,2021).

Community views on forced marriage also vary and are constantly evolving. They are divided into two groups: people who agree with the practice of forced marriage and those who are against it. A study conducted by Sofia Ayu Kusuma Dewi shows that there are several factors behind society's approval of forced marriage. These include economic, religious, and cultural factors. From a financial standpoint, marriage is a shortcut to escaping the economic downturn. In this case, parents usually force their children to marry more affluent men. (Dewi,2017) It is revealed in the following interview results:

"The factor in my marriage was pressure and coercion from my mother, who thought marriage was the only way for us to improve the economy. My parents only looked at it from an economic perspective and did not see what the man I was married to was like to me."

This research is in line with research conducted by Sunaryanto, which states that poverty gives people no choice but to force their children to marry soon. Most parents do not have the means to continue their children's education and ultimately marry them off (Sunaryanto,2019).

In addition to economic factors, the low education of children is also a cause of child marriage (Muntamah et al.,2019). Presumably, these economic factors and educational factors are interrelated. When a child is born into a low-income family environment, most of them drop out of school and marry young. Likewise, when a child drops out of school, it is mainly caused by difficult economic conditions. The enrollment rate of women aged 20-24 according to the age of first marriage can be seen in the table below.

Table 1. The enrollment rate of women aged 20-24 according to the age of first marriage (Source: Susenas, 2018)

age of first marriage	School participation		
	No/never been to school	Still in school	No longer at school
Not married yet	0,72	35,39	65,89
<18	0,83	5,57	93,60
18+	0,49	10,09	89,42

Table 1 shows that most women aged 20-24 either get married before age 18 or are 18 years old and over and no longer go to school. For women aged 20-24 years old who are married before the age of 18 years or at the age of a child, the percentage who do not/have never attended school is a little bigger compared to that married after 18 years.

Women who have married at the age of children tend to have a lower education level than those who get married at a young age. 5.57 percent of women aged 20-24 years who were married before 18 were still in school or slightly smaller (4.52 percent points) compared to those who got married at 18 years and above. The data above shows that school enrollment rates are good for

women aged 20-24 who get married at a young age or in adulthood, but it shows a small difference. However, when compared to those who have not married, still in school is 35.39 percent (“United Nations SDG Database: Proportion of Women Aged 20-24 Years Who Were Married or in a Union Before Age 18. Iraq, Iran” 2022).

3.2. The Practice of Forced Child Marriage in Indonesia

Forced marriage is forcing one or both of the bride and groom to enter a marriage. Children and women usually experience the practice of forced marriage. However, it does not rule out the possibility that men will also experience it. In a study, it was said that men also experience losses caused by patriarchal culture, one of which is the forced marriage of men (Idriss,2022). However, the reasons usually used to force someone to marry include customs, economy, and environment.

This article focuses on child marriage, the largest group in which forced marriages occur. Child marriage in Indonesia is a serious problem that must be addressed. This is because child marriage is still quite large, even though it has decreased yearly. However, the decline that occurred was still relatively slow. In 2008, the prevalence of child marriage was 14.67%, and a decade later (2018), it showed a figure of 11.21%, which means the decline was only around 3.5%. 1 in 9 women in Indonesia get married before the age of 18. At least one million Indonesian women aged 20-24 entered their first marriage before 18. Meanwhile, 61.3 thousand women aged 20-24 have married before age 15 (Hakiki et al.,2020).

Figure 1 shows the number of girl-child marriages in Indonesia in 2008-2018. Furthermore, the data above also displays disaggregation based on areas of residence in urban and rural areas. Children who experience early marriage often occur in rural areas compared to urban areas. This is in line with research results, which state that economic weakness and low education are among the causes of the high rate of forced marriage, where many rural communities experience these two things.



Figure 1. Data percentage of women aged 20-24 who experience child marriage. Source: UNICEF, child marriage in Indonesia, fact sheet 2020

In addition, child marriages that occur in Indonesia are also caused by legal loopholes that cause the state to recognize forced marriages, besides having a mission to eliminate or control the number of forced marriages. This legal loophole can be found in the 1974 UUP, which allows dispensation of marriage for brides who are still underage (Article 7, paragraph 2).

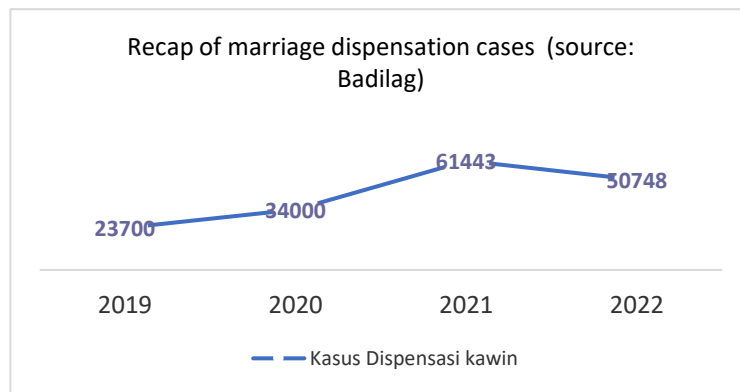


Figure 2 Recap of Marriage dispensation cases (Source: Badilag)

Figure 2 shows that requests for marriage dispensation cases have increased in the last four years. In 2019 there were 23,700 cases, which rose to 34,000 cases in 2020. In 2021, the increase in cases of the dispensation of marriage soared to reach 61,443 cases; in 2022, there were 50,748 cases. Even though it will decline in 2022, it will not be significant.

Until 2023, there will be at least 8,000 cases of requests for marriage dispensation. This condition contradicts the government's targets and aspirations to reduce the number of child marriages. On the one hand, the government wants to reduce the number of child marriages. However, on the other hand, the government provides opportunities for children who want to get married through a marriage dispensation. There needs to be more consistency between existing regulations and the goals to be achieved.

Child marriages recorded through marriage dispensation case data show pretty high numbers, not to mention the addition of marriages that occur under the hands involving children as brides. Of course, the problem of child marriage in Indonesia is like an iceberg in the ocean where what is visible is only on the surface.

It does not stop there; child marriage is a severe problem that must be considered because it impacts further social problems, such as women's reproductive health issues (Yaya et al., 2019). In several cases of reproductive health, early marriage is the leading cause of death for mothers giving birth because the mothers are still young (“WHO. Global Health Estimates (GHE), 2016,” t.t.). Apart from that, the death of newborn babies also often occurs in babies born to young mothers and in early marriages prone to violence (“UNICEF Indonesia, Maternal and Newborn Health Disparities, 2017,” t.t.).

So, from the author's perspective, shows that legal regulations regarding the rejection of forced marriage have been regulated in various favorable laws in Indonesia but have not shown a significant influence in reducing the high rate of forced marriage. The realization of legal substance is only part of the effort to realize legal effectiveness (Hidayah & Alaklabi, 2023), The other part consists of legal structure and legal culture. However, the culture or habits of Indonesian society still provide opportunities for ease in forced marriage.

CONCLUSION

Based on the explanation above, it can be concluded that existing legal regulations, as stated in the UUP, KHI, and Law No. 16 of 2019, have not had a significant impact on suppressing and eliminating the practice of forced marriage, especially with children. On the contrary, the state, through law, provides legal opportunities for children to marry through marriage dispensation.

On the other hand, the birth of the PKS Law, especially the article regarding the prohibition of forced marriage, regulates criminal aspects for perpetrators of forced marriage. Of course, this regulation overlaps with the marriage dispensation regulation because child marriage is considered valid/legitimate in the eyes of the law if it has received approval from the court through a marriage dispensation.

Apart from that, the discussion in this article also concludes that the main problem of forced marriages that occur among children is due to the weak economy and low level of a person's education. This is because marriage is considered a way out for children trapped in poor and uneducated families to escape poverty.

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