

The Islamic Perspective on Criminalization of Forced Marriage In Indonesia

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Abstract

Forced marriage is a human rights violation that is widely practiced in various parts of the world, including Indonesia. This article aims to examine the Islamic perspective on the crime of forced marriage as regulated in Law Number 12 of 2022 concerning the Criminal Offense of Sexual Violence. This research is qualitative normative legal research analyzing laws and regulations in Indonesia and Islamic legal sources. The result of the study shows that Islam prohibits any form of forced marriage. Marriage must be based on the willingness and agreement of both parties. Perpetrators of forced marriage could be criminalized or sentenced to criminal sanction (takzir). Thus, Islam affirms the regulation of the criminal act of forced marriage as stated in Article Article 4 Paragraph (1) Letter e and Article 10 of Law of the Republic of Indonesia Number 12 of 2022 concerning Criminal Acts of Sexual Violence. By criminalizing forced marriages, Islamic principles reject all forms of destruction and defend the values of justice, equality, and beneficialness.

Keywords: *Forced marriage; Islamic law; Sexual violence*

Introduction

A marriage is a sacred covenant between two partners established to build a solid and fulfilling family entity. Whether this endeavor succeeds or fails depends on the

mutual love and commitment of the husband and wife¹. However, the act of marriage, which should be the gateway to family happiness and harmony, is sometimes tainted by coercive practices that take away individual rights and freedoms, plunging couples and families into the abyss of misery. Instead of being a solid foundation for the family, forced marriage sows the seeds of discord and rift. Couples trapped in a bond without love and mutual respect are entangled in a hollow and miserable marriage circle².

Forced marriage is categorized as sexual violence. A form of sexual violence that might occur is forced sexual intercourse or marital rape. Sexual intercourse in a forced marriage is highly likely to occur if both parties agree on the acceptability of the marriage. However, if forced marriage is followed by forced sexual intercourse, indeed, a fatal circumstance occurs in a forced marriage³.

Cultural factors are among the factors driving the practice of forced marriage, such as the Pattongko Siri tradition in Gowa⁴, Kawin Tangkap in Nusa Tenggara Timur⁵, and Nikah Sirit in the indigenous people of Lampung Pepadun⁶. The cultural interpretations in this regard are menstruating women are considered mature enough to marry, the assumption of being an old maid and being gossiped about, preventing adultery or bad things, arranged marriages, maintaining social class and status, unwanted pregnancies, and taking away daughters. Beyond cultural

¹ Muhammad Andri, "Implementasi Bimbingan Perkawinan Sebagai Bagian Dari Upaya Membangun Keluarga Muslim Yang Ideal," *ADIL Indonesia Journal* 2, no. 2 (August 11, 2020), <https://jurnal.unw.ac.id/index.php/AIJ/article/view/621>.

² Salijah Hamid, *Resolusi Konflik Akibat Pernikahan Paksa Perspektif Hukum Nasional Dan Hukum Islam: Studi Di Lamata, Kabupaten Wajo*. (Masters thesis, IAIN Parepare., 2022).

³ Deybi Santi Wuri; 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*, no. Vol 9 No 5 (2020) (2020): 1-12, <https://ojs.unud.ac.id/index.php/kerthawicara/article/view/58896/34259>.

⁴ Sry Imawati, *Tinjauan Hukum Islam Terhadap Pernikahan Atas Paksaan Orang Tua Di Kelurahan Bontoramba Kec. Somba Opu Kab. Gowa (Studi Kasus Pernikahan Pattongko Siri)* (Makassar: Universitas Islam Negeri Alaudin Makassar, 2015).

⁵ Elanda Welhelmina; I Made Suwetra dan Diah Gayatri Sudibya. Doko and Nusa, "Tradisi Kawin Tangkap (Piti Rambang) Suku Sumba Di Tenggara Timur," *Jurnal Konstruksi Hukum* 02 (2021): 03.

⁶ Nancy Dela. Oktora, "Tradisi Sirit Masyarakat Lampung Dalam Jurnal, Perspektif Hukum Keluarga Islam," *Istinbath : Jurnal Hukum* 14 (2017): 01.

factors, the practice of forced marriage is particularly prevalent due to parental, economic, educational, and environmental factors⁷.

Forced marriage potentially impairs a woman's reproductive function, and when she becomes pregnant, she does not want the pregnancy, which can lead to abortion. Another impact is the falsification of documents for children born from forced marriages, rejection and hatred of children born from forced marriages by their respective mothers, and a decrease in the spirituality and religiosity of the victim⁸.

The criminalization of forced marriage is controversial in Islam. Islam prohibits any form of coercion in marriage. Marriage must be based on the free will and consent of both parties. However, there are differences of opinion regarding the criminal law for perpetrators of forced marriage.

Forced marriage, according to the Law of the Republic of Indonesia Number 12 of 2022 concerning Criminal Acts of Sexual Violence, is categorized as a crime of sexual violence⁹. The Government's regulation of the Law on Sexual Violence with criminal penalties for forced marriage has sparked debate, with some viewing it as conflicting with Islamic Shari'ah rules. In contrast, others see it as a necessary response to the negative impact of forced marriage. Therefore, the purpose of this study is to examine the Islamic perspective on the criminal offense of forced marriage as regulated in the Law of the Republic of Indonesia Number 12 of 2022 concerning Criminal Acts of Sexual Violence.

This research is qualitative normative legal research analyzing laws and regulations in Indonesia and Islamic legal sources.¹⁰ The researcher accumulated data from comprehensive literature sources, such as books, scientific journals, and online articles. This research uses conceptual analysis, which examines the obtained

⁷ A. Mahfudin dan S. Musyaroffah, "Dampak Kawin Paksa Terhadap Keharmonisan Keluarga," *Jurnal Hukum Keluarga Islam* 04, no. 01 (2019): 10–12.

⁸ Ivada Ilya, "Perlindungan Perempuan Dari Pemaksaan Perkawinan Perspektif Maqashid Syari'ah (Studi Fatwa KUPI Ke-2 No. 06/MK-KUPI-2/XI/2022)," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 2 (2023): 2547–60, <https://doi.org/10.37680/ALMANHAJ.V5I2.2476>.

⁹ F Pratiwi, N Risa, and P Putra, "SOSIALISASI PROTOKOL KESEHATAN DAN VAKSINASI SERTA PELATIHAN MANAJEMEN KEUANGAN BAGI RUMAH TANGGA," *DEVOSI* (scholar.archive.org, 2022), <https://scholar.archive.org/work/luwhrikgmvdj7cbfekcd7yuqva/access/wayback/https://jurnal.unismabekasi.ac.id/index.php/devosi/article/download/4410/2123/>.

¹⁰ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 2010).

data by distinguishing, analyzing, and representing various concepts correlated to the crime of forced marriage from the Islamic perspective.

Result and Discussion

The criminalization of forced marriage in Indonesia

Criminal law has two functions: a general function to regulate people's lives or organize social order and a specific function to safeguard legal rights with penal code sanctions¹¹. Furthermore, criminal law has a particular function to regulate the criminalization of forced marriage to preserve human rights, prevent violence, and ensure justice for the victims.

Forced marriage refers to a situation where one or both parties involved in a marriage are married without their free and full consent. It can affect various forms of coercion, pressure, or abuse to compel individuals into marriage against their will. It violates human rights and can have severe consequences for the individuals involved¹².

The criminal act of forced marriage is regulated in Article 4 point 1 letter (e) Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. This regulation specifically addresses the issue of forced marriage as a criminal act of sexual violence¹³. It provides legal provisions and penalties for individuals who engage in or facilitate forced marriages. By including forced marriage within the scope of criminal acts of sexual violence, the law aims to protect individuals from being coerced into marriages against their will¹⁴.

Furthermore, article 10 number 1 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence states that every person who unlawfully forces places a person under their power over another person or abuses their power to perform or allow marriage to be performed with him or with another person shall be penalized for forced marriage, with a maximum imprisonment of 9 (nine) years

¹¹ Sudarto dalam Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma Pustaka, 2014).

¹² Neha Jain, "Forced Marriage as a Crime against Humanity: Problems of Definition and Prosecution," *Journal of International Criminal Justice* 6, no. 5 (November 1, 2008): 1013-32, <https://doi.org/10.1093/JICJ/MQN064>.

¹³ Mu'ammarr Wafiuddin, "Undang-Undang Tindak Pidana Kekerasan Seksual Tentang Pemaksaan Perkawinan Perspektif Feminist Legal Theory," 2022.

¹⁴ Ramadhita Ramadhita, "Latar Historis Indikator Kerelaan Perempuan Dalam Perkawinan," *De Jure: Jurnal Hukum Dan Syar'iah* 7, no. 1 (June 1, 2015): 31-38, <https://doi.org/10.18860/J-FSH.V7I1.3507>.

and a maximum fine of Rp.200,000,000.00 (two hundred million rupiahs). To criminalize forced marriage, particular elements of the article must be proved, such as the presence of abuse of power or violence, threats of violence, deception, or other psychological pressure, and the inability of the victim to give informed consent in a marriage.¹⁵

The inclusion of forced marriage as a criminal act in Law Number 12 of 2022 is significant as it acknowledges the seriousness of this issue and provides a legal framework to address and combat it. By criminalizing forced marriage, the law sends a strong message that such practices are unacceptable and punishable by law.

Protecting the victims is a critical purpose of regulating criminal acts of sexual violence. By recognizing forced marriage as a criminal act, the law ensures that victims have legal recourse and can seek justice against those responsible for coercing them into marriage. This legal protection can empower victims to come forward, seek help, and break free from abusive situations.

Legal regulation of forced marriage also plays a role in prevention and raising awareness about this issue. By criminalizing forced marriage, the law raises public awareness about the harm and consequences of such practices. It also signals to society that forced marriage is not tolerated and should be actively prevented.

Protection in the Law Concerning Criminal Acts of Sexual Violence has been declared as a law with specificities, one of which is the specificity in emphasizing the rights of victims, which are easily accessible to victims, and the costs covered by the Government. Legal protection of victims of forced marriage is regulated explicitly in the sixth part of Article 42 to Article 47 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence¹⁶. These rights are integrated into a multidisciplinary, coordinated and sustainable process of handling, protecting and recovering victims. These rights are fulfilled at every stage of the criminal justice process, including coordinating the implementation of victims' recovery.

¹⁵ Juvani Leonardo Fiore Mongkaren, Debby Telly Antow, and Rudolf Sam Mamengko, "TINDAK PIDANA PEMAKSAAN PERKAWINAN MENURUT UNDANG-UNDANG NOMOR 12 TAHUN 2022," *Lex Crimen* 12, no. 3 (n.d.), <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/47970>.

¹⁶ 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): 24-33, <https://doi.org/10.30595/KOSMIKHUKUM.V23I1.17320>.

Islamic Perspective On The Crime Of Forced Marriage

Marriage is a sacred relationship. A man and a woman who love each other sufficiently to live together commit to each other through matrimony. It is tricky to equalize the perspectives of two physically and psychologically dissimilar people. Islam thus governs all aspects of marriage, including the divorce process and the rights and obligations of the parties involved in the relationship. The Qur'an refers to the marital relationship between husband and wife as a relationship of partnership, or cooperation and pairing; both are like clothes that cover each other's *aurat*, warm and reveal their elegance¹⁷.

In this marital relationship, both must be kind to each other, always communicate, be mutually willing, and maximize love to realize happiness together.¹⁸ The bond and relationship of marriage, as described in the Qur'an, will be challenging to relize when a person is forced to get married, especially if others force them. Forced marriage will lead to hatred, or at least someone's reluctance to get in and take responsibility for building a household with their mate. On the contrary, forced marriage will be the beginning of all immoral actions, oppression, and even violence that have a dangerous impact on the household life.

In Islamic law (*fiqh*), forcing is termed as *ikrah*. It means the act of pressuring another person to do something that he does not want to do.¹⁹ A marriage that is forced, or in which one of the parties is forced so that they do not choose to or are unwilling to consent, is invalid because choice and willingness (*Ridlā*) are conditions for the validity of the marriage contract, according to the majority of scholars.

الرضا والإختيار من العاقدین أو عدم الإكراه هو شرط عند الجمهور غیر الحنفية فلا یصح الزواج

بغير رضا العاقدین

¹⁷ Dewi dan Hani Asparul Murni, "Penafsiran Ayat Al-Libās Dalam Tafsir Kontemporer," *Syahadah Jurnal Ilmu Aalqur'an Dan Keislaman* 09, no. 02 (2021), <http://ejournal.fiaiunisi.ac.id/index.php/syahadah/article/view/367>.

¹⁸ By Abdul Haris, "Panduan Syariat Islam Dalam Berkomunikasi Untuk Melerai Konflik Suami Istri," July 24, 2019, <https://repositori.uma.ac.id/handle/123456789/12455>.

¹⁹ Ibn Hajar Al'Asqallani, *Fath Al Bāry Syarh Shahih Al-Bukhāri*. (Beirut: Dar al-Kutub Al-Ilmiyah., 1986). Vol. 12 hlm 311

"The willingness and choice of the bride and groom, or the absence of forcing, is a condition of marriage according to the majority of scholars, other than the Hanafis. Hence, no marriage is valid without the willingness of the bride and groom."²⁰

Furthermore, Wahbah az-Zuhaili explained that the marriage of two prospective brides is invalid without their willingness. If either of them is forced by *ikrah*, such as killing, beating, or imprisoning, the contract of marriage is invalidated. (*fasad*)²¹."

The Prophet rejected forced marriages. When it happened to a woman, the Prophet canceled the forced marriage and left the decision up to the woman²². One well-known story that is widely cited in hadith books is about a female companion named Khansa bint Khidam ra, who was forcibly married off by her father. When she complained, the Prophet canceled her marriage and told her:

لا نكاح له انكحي من شئت

"He (your father) has no right to determine your marriage; marry whomever you wish"²³."

Sementara kepada ayahnya, Nabi Saw berkata:

لا تنكحها وهي كارهة

"Do not marry her (your daughter) when she is not willing"²⁴

The Prophet also emphasized the importance of the consent of the prospective bride, especially the woman, in the case of marriage, whether she has not experienced a marriage, or has experienced it, then divorced or left her husband.

Some practices of forced marriage among muslims are based on the concept of the right of *ijbâr* of a guardian to a woman under his guardianship. Many people often understand the right of *ijbâr* as the right of a father to impose the will of marriage on his daughter. The right of *ijbâr* is based on a father's responsibility to

²⁰ Muhammad Musthafa. Az-Zuhaili, *Al-Qawâ'id Al-Fiqhiyah Wa Tathbiqatuhâ Fi Al-Madzâhib Al-Arba'ah*. (Damaskus: Dar al-Fikr, 2006). Vol 7, Hlm 78-79

²¹ Wahbah Az-Zuhailiy, *Al-Fiqh Al-Islâmiy Wa Adillatuhu*. (Damaskus: Dar El-Fikr., 1989). Vol. 9 Hlm. 6567

²² Öğr Üyesi and Daawa İslami Üniversitesi İlahiyat Fakültesi İslam Hukuku Anabilim Dalı, "صلاحيات الولي في عقد النكاح في الفقه الإسلامي "دراسة فقهية مقارنة مع الاستدلال بأصول الفقه ومقاصد الشريعة", *Usul İslam Araştırmaları* 38, no. 38 (October 1, 2022): 81-112, <https://doi.org/10.56361/USUL.1101822>.

²³ An-Nasâ'i, *Sunan An-Nasâ'i Al-Kubrâ*, n.d. No.5359 Vol. 5, Hlm. 174

²⁴ An-Nasâ'i. No. 5361, Vol. 5, hlm. 175

bring the best for his daughter, not an act of force (*ikrâh*).²⁵ The basic assumption of *ijbâr* as the father's responsibility is that the daughter is still inexperienced in choosing a partner. It means that the right of *ijbâr* is not a force but rather a responsibility to ensure that the prospective bride obtains the benefits of marriage.

Ijbâr has a different meaning from *ikrâh*. *Ikrâh* itself is a force on a person to do a certain job, with a threat of harm to his soul or body, without the person being able to resist. As for the person being forced, the act is actually against the will of his conscience or mind²⁶.

Etymologically, the word "*ijbâr*" means to force or oblige to carry out something.²⁷ Meanwhile, terminologically, "*ijbâr*" is a form of action taken to carry out something with an element of protection.²⁸

On the other hand, the enactment of *ijbâr* marriage is also debated in Islam because this marriage can be performed without the consent of the bride-to-be or after her refusal²⁹. The right of *ijbâr* is still a social problem where the right is understood between power and protection. This duality of understanding is the main problem of the debate, so the concept of *ijbâr* is considered contrary to equality and justice. Some argue that through the right of *ijbâr*, a guardian can marry a woman under his guardianship without her consent. In other words, *ijbâr* is a form of a father's responsibility towards his daughter. However, it does not exclude the possibility that what is considered good by the parents may not necessarily be felt by the daughter.

²⁵ Siti Nurmaidawati Harahap, "Perlindungan Hukum Hak Perempuan Terhadap Ijbar Wali Nikah Dalam Memaksakan Perkawinan." (Undergraduate (S1) thesis, Universitas Islam Negeri Walisongo, 2023), <https://eprints.walisongo.ac.id/id/eprint/21831>.

²⁶ Alauddin Abu Bakar Ibnu Mas'ud, *Bada'î Ash-Shana'î Fi Tartib Asy-Syara'î* (Dar al-Kutub Al-Ilmiyah., n.d.). Vol. VII, hlm. 175-176.

²⁷ Analisis Perkawinan Paksa, Mohsi Sekolah Tinggi Agama Islam Miftahul Ulum Pamekasan, and Jawa Timur, "Analisis Perkawinan Paksa Sebagai Tindak Pidana Kekerasan Seksual Dalam Rancangan Undang-Undang Penghapusan Kekerasan Seksual PKS," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 5, no. 1 (April 12, 2020): 1-19, <https://doi.org/10.35673/AJMPL.V5I1.578>.

²⁸ Louis Ma'luf, *Al-Munjid Fi Al-Lughat Wa Al-A'lam* (Beirut: Dar Al-Masyriq, 1968).

²⁹ Harahap, "Perlindungan Hukum Hak Perempuan Terhadap Ijbar Wali Nikah Dalam Memaksakan Perkawinan."

Moreover, the right of *ijbār* is given priority without being balanced by the opinion and consent of the daughter. In that case, the purpose of marriage, which is to achieve peace and happiness, may become suffering³⁰.

The right of *ijbār* can be applied with the fulfillment of several conditions, including there is no hatred and enmity on the part of the woman, either toward her father or toward the prospective bridegroom offered by her father; the prospective husband is equal or compatible to her (*kufū'*); the dowry given to her is also equal (*mitsli*); and there is no suspicion that the prospective bridegroom will do anything to harm her.³¹

For instance, from the perspective of Shafi'i madzhab, the one who has the right of *ijbār* in marriage is the father because he has the power over the marriage of his daughter. If there is no father, he can be replaced by the grandfather. Fathers and grandfathers can be classified as *mujbir* guardians who have the right and power to marry their daughters even without their consent. Meanwhile, if it is examined in depth, the right of *ijbār* in Islam is a form of concern for the father's responsibility to his daughter because the daughter's position is still considered not yet or not in control of the ability or weak in deciding and taking action on their own. Thus, it can be understood that the right of *ijbār* is actually the protection of a father to his daughter in marriage with a man, not an attempt to force his daughter to marry someone else without the child's will.

Furthermore, the development of contemporary fiqh not only considers the consent and absence of coercion of the bride and groom as conditions for the validity of marriage³² but also considers the act of forced marriage to be a criminal and sinful act.

The Fatwa Committee of the Islamic Research Council in Egypt declared that the tyranny of the guardian in choosing the husband and the sole contract (*aqd*) is a crime against women and an insult to their emotions and feelings. It is not legal to force a woman to marry someone she does not choose, and if he forces her to marry, the marriage is not valid, and the Prophet rejected it³³.

³⁰ Arini Robbi Izzati, "Kuasa Hak Ijbar Terhadap Anak Perempuan Perspektif Fiqh Dan Ham," *Al-Mawarid, Journal of Islamic Law UII Yogyakarta*, XI, no. 2 (2011): 242-243.

³¹ KH. Husein. Muhammad, *Fiqh Perempuan: Refleksi Kyai Atas Wacana Agama Dan Gender*. (Yogyakarta: LKiS, 2001). Hlm 77-82

³² Wahbah Az-Zuhailiy, *Al-Fiqh Al-Islamiy Wa Adillatuhu* (Damaskus: Daar El-Fikr, n.d.).

³³ Lua'iy Ali, "تعرف على حكم إكراه المرأة على الزواج," *Ta'arrafa' Alâ Ra'Yi Lajnat Al-Fatwâ Fi Hukm Ijbâr Al-Fatât 'alia Az-Zawâj*, *Al-Yaum as-Sâbi'*, 2018, <https://www.youm7.com/story/2018/4/1/3721750/تعرف-على-حكم-إكراه-المرأة-على-الزواج>.

The policy taken by the Indonesian Government to respond to the rampant practice of forced marriage is to enact Law No. 12 of 2022 on Criminal Acts of Sexual Violence, which provides strict criminal sanctions for perpetrators of forced marriage, which is also in line with Marriage Law No. 1 of 1974, Article 6 paragraph (1), where marriage must be based on the consent of both prospective brides. Indonesian government policies are certainly based on the benefits and welfare of the people and the country. In the rules (*qaidah*) of fiqh are mentioned:

تصرف الإمام على الرعية منوط بالمصلحة:

"The actions of the leader towards his people are based on the benefit of the people."

According to As-Suyuthi, this rule means that a leader should command a certain thing to ensure the benefit of his people, while there is no benefit in leading people to do something that is forced upon them³⁴.

The absence of *maslahat* in something that is forced also applies to marriage, so guardians as protectors and leaders should consider their decision to marry a woman who is forced so that there is no marital life that is not *maslahat*. The Government's policy of imposing criminal sanctions is in line with the opinion of Abdurrahman Ba'alawy, who wrote in his book *Bughyah al-Mustarsyidin* that a guardian who marries his daughter to someone who is not equal or compatible (*kufu'*) with her or has no need for her is entitled to be punished³⁵.

The criminalization of forced marriage is an implementation of the Government's obligation to protect all its people. This policy is implemented because the Government considers the benefits that could be achieved by implementing these regulations based on its people's legal needs and protection. The authorization of the Government to enforce criminal policy or *takzir* as part of this country's regulation cannot be separated from the purpose of the implementation of the law, namely that Allah does not intend to make rules in this world to become a burden, but rather to lift the burden itself from His servants³⁶.

Thus, both *ikrah* and *ijbar* marriages are no longer relevant. Therefore, to address the existing differences in scholarly arguments regarding the law of marrying

³⁴ Abdurrahman As-Suyuthi, *Al-Asybah Wa An-Nazhai*, ((Beirut: Darul Kutub Al-Ilmiyah, 1990). Hlm. 121

³⁵ Abdurrahman Ba'alawy, *Bughyah Al-Mustarsyidin Fi Talkhishi Fatawa Ba'dli AlAimmah Min Al-Ulama Al-Muta'Akhirin* (Beirut: Dar El-Fikr, n.d.). hlm 437

³⁶ Muhammad Musthafa Az-Zuhailiy, *Al-Wajiz Fi Ushul Al-Islamiy*, (Damaskus: Darul Khair, 2006). Vol 1, hlm. 108

without consent or based on *ijbār* rights, it can be stated that the law of forced marriage is *harām* and prohibited. Hence, each Indonesian Muslim citizen is obliged to comply with the existing regulations by not practicing the criminal act of forced marriage, as regulated by Law No. 12 of 2022 on Criminal Acts of Sexual Violence.

Conclusion

A marriage must be implemented correctly, and no coercion is allowed from the marriage guardian or other parties. A valid and legal marriage means that it has fulfilled all the requirements determined, both in the Islamic religion and according to the existing laws in Indonesia.

Forced marriage is classified as one of the criminal acts of sexual violence that causes physical, mental or psychological suffering as contained in Article 4 Paragraph (1) Letter e and Article 10 of Law of the Republic of Indonesia Number 12 of 2022 concerning Criminal Acts of Sexual Violence with a maximum imprisonment of 9 (nine) years and a maximum fine of Rp200,000,000.00 (two hundred million rupiahs).

Forced marriage in Islamic law is in the frame of *ikrāh* marriage, where the perpetrator can be prosecuted with criminal sanctions (*takzīr*). Meanwhile, the *ijbār* right of a guardian should not mean providing greater authority for a guardian to marry off his daughter without obtaining the consent of the daughter. The noble purpose of marriage is to build a peaceful, serene, happy, and prosperous family between the two bride and groom.

The criminalization of forced marriage according to Islamic law and Law of the Republic of Indonesia Number 12 of 2022 concerning Criminal Acts of Sexual Violence can be justified on the basis of *maslahah mursalah* in achieving benefit (*maslahat*) to support the Government's obligation of upholding justice as a form of protection for its people. Criminal sanction (*takzīr*) is regulated as a form of government prudence to prevent and eliminate damage (*mafsadat*) that can be occurred.

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