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FORCED MARRIAGE AS ONE OF THE CRIMES OF SEXUAL VIOLENCE

Abstract

Forced marriage is an act that is not just a social problem but has turned into a legal problem. Marriages carried out without the consent of the prospective husband and prospective wife have the potential to cause problems in family life, and even have the potential to cause physical, psychological and sexual violence. The purpose of writing this article is to analyze the importance of regulation on forced marriages to prevent family violence, especially sexual violence. Problems will be studied using normative legal research methods, with a statutory approach. The result of this study is that the presence of criminal law by criminalizing forced marriages is an effort to protect society from problems arising from forced marriages, namely the potential for violence, physical, psychological and sexual violence.

Keywords: *Criminal Law, Forced Marriage, Sexual Violence*

Abstrak

Kawin paksa merupakan suatu perbuatan yang tidak sekedar menjadi permasalahan sosial namun telah berubah menjadi permasalahan hukum. Perkawinan yang dilakukan tanpa persetujuan calon suami dan calon istri berpotensi menimbulkan permasalahan dalam kehidupan berkeluarga, bahkan berpotensi menimbulkan kekerasan fisik, psikis, dan seksual. Tujuan penulisan artikel ini adalah untuk menganalisis pentingnya pengaturan kawin paksa untuk mencegah kekerasan dalam keluarga, khususnya kekerasan seksual. Permasalahan tersebut akan dikaji dengan menggunakan metode penelitian hukum normatif, dengan pendekatan perundang-undangan. Hasil dari penelitian ini adalah hadirnya hukum pidana dengan mengkriminalisasi kawin paksa merupakan upaya untuk melindungi masyarakat dari permasalahan yang timbul akibat kawin paksa, yaitu potensi kekerasan, kekerasan fisik, psikis, dan seksual.

Kata Kunci: *Hukum Pidana, Kawin Paksa, Kekerasan Seksual*

INTRODUCTION

Marriage is a very important legal event for humans with various legal consequences. Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the one and only God, which must be carried out in accordance with their respective religions and must also be recorded according to laws and regulations. valid invitation (Safrin, Salam, 2022). Every Indonesian citizen has the basic right to

lead a family life in a legal marriage bond in order to continue the lineage guaranteed by the Indonesian constitution. The human right to carry out marriage can be understood as the freedom to carry out marriage, without coercion from any party. Marriages carried out between a man and a woman who have met the requirements to enter into marriage must be based on an agreement between the two. Any form of forced marriage from any party is a violation of the human rights of citizens (Kurniawan, Arif, 2017).

Forced marriage is a marriage that occurs without consent of one or both parties: including marriage children because, by definition, children are unable to give consent. Forced marriage is a serious violation of individual rights, including the right not to marry; when it happens to children, it is a form of child abuse. This condition putting the victim at risk of honor killing and generally leads to serious and long-lasting harm, including kidnapping, family violence, rape, forced pregnancy, and domestic slavery (Bunga, Dewi, 2023). Forced marriage, especially against children, does not only have implications in the realm of family law. However, this can lead to other legal problems that are included in criminal law if forced marriages have an impact on the occurrence of criminal acts in the family (Bakar, Abu, 2014).

Women and children are vulnerable subjects in forced marriages. This party is also a group that is vulnerable to violence, be it physically, psychologically, sexually and economically. Women in general also get two times more customary sanctions than men, including the sanction of being forced to marry. The types of marriages found in the study of culture-based violence against women include consanguineous marriages, elopements, blind Chinese marriages, grebeg marriages (capture or mudemu marriages), forced marriages due to pregnancy or sexual relations and early marriages. Forced marriage is against the laws and regulations in force because it can damage the future of a child or a woman. Forced marriage is the practice of marriage, in which one party experiences coercion, usually happens to women, as a party is considered to have violated adat or for certain other reasons related to customary law in force, in the community where the couple lives (Rositawati, Justina and Khadijah Nurwanti, Siti, 2013).

Regarding the factors that cause forced marriages, there are several studies that reveal the factors that cause forced marriages. These factors include:

1. Parental factors, economic factors, low level of education, customs that apply in the neighborhood; (Mahfuddin, A, and Musyaroffah, S, 2021)
2. Factors pregnant before marriage, economic factors, and educational factors. (Brigita, 2019)

The Indonesian government has made various efforts to prevent forced marriages of minors, but forced marriages, especially of minors, are still rife (Leonardo, Juvani, 2023). Forced marriages are still rife in Indonesia and have implications for increasing the number of early marriages. Based on data submitted by the National Commission on Women, in 2020 there were 64,221 cases of early marriage caused by forced marriages (Sindonews, 2021). The still high number of early marriages caused by forced marriages is a violation of Law Number 1 of 1974

concerning Marriage and Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage. The two laws have set a minimum age limit for both men and women to enter into marriage. The purpose of regulating the minimum age limit in the law is to prevent early marriages which usually occur due to forced marriages.

Responding to the continued prevalence of forced marriages, especially against minors, which has implications for the potential for criminal acts of sexual violence, the Government of Indonesia passed Law Number 12 of 2022 concerning Crimes of Sexual Violence. The law includes forced marriage as a type of sexual violence crime. The fundamental consideration of the inclusion of forced marriage as a type of sexual violence crime is given the magnitude of the negative impacts arising from forced marriages on children.

This article will analyze the formulation of the crime of forced marriage in Law Number 12 of 2022 concerning Crimes of Sexual Violence and criminal responsibility for perpetrators of criminal acts of forced marriage.

RESEARCH METHODS

The writing of this article uses normative legal research methods. The approach used is the statutory approach. The problems in this study will be studied deductively, from general propositions, that is laws and regulations related to forced marriage as sexual violence, to specific propositions, namely factual problems related to the crime of forced marriage as a form of sexual violence crime.

RESULTS AND DISCUSSION

Apart from being regulated in Article 28B of the 1945 Constitution, the right to marry and form a happy and prosperous family is also regulated in Article 10 of Law Number 39 of 1999 concerning Human Rights. Paragraph (1) of the provisions of the article stipulates that every person (citizen) has the right to form a family through legal marriage and continue offspring, further in paragraph (2) of the article it is said that marriage must be carried out at the free will of the prospective husband and prospective wife concerned and carried out according to the provisions of the legislation. Observing the provisions of this article, it can be interpreted that marriages are carried out voluntarily by men and women who have the intention to form a family and continue offspring.

A valid marriage means that it has fulfilled all the requirements that have been determined, both religiously and according to the law in force in Indonesia. Provisions regarding marriage as previously explained are regulated in the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage and its implementing regulations, namely Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning Implementation of the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage. The age of marriage for women, from sixteen years to nineteen

years is regulated in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.

Coercion of marriage is a criminal act recently criminalized in Indonesia. Previously, coercion marriage always takes refuge behind customary law and parental power over children. Law Number 12 of 2022 concerning The Crime of Sexual Violence then formulates coercion marriage as a crime of sexual violence. Although thus, preventing the practice of coercive sexual violence must deal with the mindset of society and customary law so far maintained (Bunga, Dewi, 2023).

This practice of forced marriage actually has several type when viewed from the motive. For example, there is coercion marriage carried out by someone through "arrangement". This matter a lot happens in the family, more precisely the forced marriage by parents towards their children. Where many cases occurred that children are forced to marry someone who has not known or do not want to marry. There is also forced marriage committed by one individual against the opposite sex. Matter this usually happens when one of the parties wants to carry out marriage, but the other party, namely the opposite sex, refuses to married, resulting in coercion. Besides Apart from that, forced marriages also often occur rape victims. (Wuri and Dewi, 2021).

Saving the family's reputation was also a contributing factor from the practice of forced marriage in society. The story of two teenagers in Central Lombok is quite unique, according to NH's acknowledgment, proximity they had only been running four days. They met and went together to one of the tourist attractions in Central Lombok. Both go home and of course S took the girl to her house. NH's father looked the return was too late, and therefore the wedding had to be soon done. For residents who hold strong traditions, if not immediately getting married, the good name of the girl and her family will be smudged. A tug-of-war occurred, because the S family requested marriages are not done so quickly. Nonetheless, custom beats all reason. The marriage of the two is still held and married a religious leader (Sucahyo, 2022).

Women in forced marriages in the name of cultural practices are a group that is very vulnerable to experiencing violence, both physically, psychologically, sexually, economically, and in layers between this violence. Women in these circumstances experience ambiguous conditions. The position of women is between rejecting and accepting forced marriages, receiving violence that is no less severe, both from customary sanctions and social sanctions at a higher level than men. Customary fines are also equated between women who are victims and perpetrators, where the reason is used, namely that both parties are responsible for the marriage. This happens without seeing that in every practice, women experience coercion and layered violence ((Rositawati, Justina and Khadijah Nurwanti, Siti, 2013).

The presence of Law Number 12 of 2022 concerning Crimes of Sexual Violence brings new hope for protection against the occurrence of sexual violence, especially against children and women. If examined further back regarding the background of

the birth of Law no. 12 of 2022 concerning Crimes of Sexual Violence can be found that although there have been laws governing some forms sexual violence, but the scope and form are still very limited. Thereby also with the substance of the regulations which are still not fully able to respond facts of sexual violence that occur and develop in society. So are with law enforcement agencies, including the police, the judiciary, and judiciary, has not fully paid attention to the rights of victims and tends to blame the victim. In addition, in the legal considerations of the law stated that this law was formulated in order to overcome all kinds of forms sexual violence that is rife in Indonesia, provides protection law, guaranteeing justice, and restoring the rights of victims of sexual violence.

According to the Draft Law on the Elimination of Sexual Violence, forced marriages are regulated in 17 bills which state that forced marriage is an act of abusing power by force, threat of violence, trickery, or other psychological pressure that results in a person not being able to give true consent to marriage. So that the elements that must be met in order to say that there has been a forced marriage, namely: there is an abuse of power; or the existence of violence, threats of violence, tricks, or other psychological pressure; as well as result in a person not being able to give consent properly in carrying out a marriage. However, it is of course necessary to pay attention to the elements of forced marriage, namely the result in a person not being able to properly give consent to enter into a marriage. Later in the day, if with the passage of time it is evident that the party who feels the marriage is forced in fact accepts the marriage, of course this cannot be a criminal act of forced marriage because there is already an agreement in it. (Wijaya, Andika and Ananta, 2016).

If we study at the motives for the occurrence of forced marriages that often occur in this society, in fact the practice of forced marriage is very contrary to human rights. This is because the occurrence of marriage is not the will of both individuals or one individual in a marital relationship but on the basis of coercion and even threats are possible. Even though every individual has the right to do something based on his will as part of the right to personal freedom as stipulated in article 4 of the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights (hereinafter referred to as the Human Rights Law) which regulates that the right to life; rights are not tortured; the right to freedom of person, thought and conscience; the right to freedom of religion; the right not to experience slavery; the right to recognition as a person and equality before the law, and the right not to be prosecuted on the basis of a law that applies retroactively is part of human rights which cannot be reduced under any circumstances and by anyone (Mahfudin, A dan Musyaroffah, S,2019). This means that the Law itself has guaranteed the freedom of each individual in determining his will, especially in matters of marriage. These rights cannot be disturbed or eliminated under any circumstances and by anyone because human rights are regulated in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) and the Human Rights Law is included in

the category of non-derogable rights. Non-derogable rights themselves can be interpreted as rights that cannot be reduced. If we study it from the perspective of existentialist psychology, it can be interpreted that forced marriage immediately creates anxiety because the perpetrator feels that he does not have the ability, authority, and choice in any decision (Abu Bakar, 2020)

Law Number 1 of 1974 concerning Marriage as amended in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage is the main legal basis for marriage. Article 1 of the law stipulates that marriage is a physical and spiritual bond between a man and a woman to form a happy and eternal family based on the One and Only God. Furthermore, in Articles 6 to 12 it is stated that marriage must be carried out based on free will or voluntarily between the two prospective brides (male and female), so that without an agreement or agreement between the two prospective brides, the marriage cannot be carried out.

Observing from the provisions of these articles, it is clear that marriage must be carried out voluntarily based on an agreement or agreement between the man and the woman who will carry out the marriage. The agreement or agreement is a condition that must be fulfilled to achieve the goal of marriage, namely obtaining physical and spiritual well-being for husband and wife. Without this agreement and agreement, it is feared that the purpose of marriage will not be achieved, and it will actually have the potential to cause problems in family life, even violence in family life. Law Number 1 of 1974 concerning Marriage as amended in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage also regulates the cancellation of marriages in Article 27 paragraph (1), which allows the parties (husband/wife) to apply for annulment if later in their family life there are family problems that cannot be resolved.

Although a marriage based on coercion can be annulled so that the marriage is deemed not to have occurred. However, the element of sexual violence in the forced marriage certainly cannot be overcome only with the annulment of the marriage. Of course this is the role of criminal law in it, where criminal law is certainly expected to be able to overcome sexual violence that occurs as a result of forced marriages. The purpose of criminalizing perpetrators of forced marriages is based on a balance of two main objectives, namely the protection of society and the protection/coaching of individual perpetrators of criminal acts (Arief, Barda Nawawi, 2011). Criminal law with cruel sanctions should indeed be the last alternative or the last remedy (*ultimum remedium*) for a legal problem that occurs in society. However, on the other hand, in order to provide protection for people's lives and to realize social welfare as the goal of criminal law, if necessary, criminal law can exist to protect society. One manifestation of the presence of criminal law in protecting society is the provision of criminal sanctions for anyone who is proven to have committed an act of forced marriage.

Article 10 Law Number 12 of 2022 concerning Sexual Violence Criminal Act regulates criminal formulation and sanctions for perpetrators of forced marriages. In paragraph (1) stated "Anyone is unlawfully forcing, placing someone under his authority or another person, or his authority to perform or allow marriage to be performed with him or with another person, is convicted of forced marriage, with a maximum imprisonment of 9 (nine) years and/or imprisonment a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah). Paragraph (2) then emphasized that including the forced marriage as referred to in paragraph (1) in the form of: child marriage; forced marriage in the name of cultural practice; or forced marriage between the victim and the perpetrator of the rape. The imposition of criminal sanctions in this article is an attempt by the government to overcome the rampant forced marriages in public life. Criminal sanctions that are cruel are expected to be able to deter perpetrators of forced marriages or prevent parents from forcing marriages against their children, given the threat of criminal sanctions they will receive.

CONCLUSION

Forced marriage is a social phenomenon that often occurs in the life of Indonesian society caused by the great power of parents over their children. The reason for the emergence of forced marriages is generally motivated by the good will of parents to provide a better life for their children by choosing a mate for their child. Cultural factors are also often the background to the occurrence of forced marriages, so that children do not have the freedom to choose their life partner.

Along with the development of community life, forced marriage is not just a social problem that is within the scope of the family. Coerced marriage is a form of violation of human rights, namely the right to have a family to continue offspring, and has the potential to cause legal problems. Legal problems that can be caused by forced marriages include the potential for violence in the family, both physical violence, psychological violence and sexual violence. In connection with these potential problems, the Indonesian government criminalizes the act of forced marriage as a type of crime that includes sexual violence in Law Number 12 of 2022 concerning Crimes of Sexual Violence. The purpose of criminalizing forced marriages as one of the crimes of sexual violence is to protect society from the negative impacts that occur as a result of marriages without the free will of the prospective bride and groom.

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