

UNDERSTANDING FAMILY LAW AS A SOLUTION TO PREVENT SEXUAL VIOLENCE AGAINST CHILDREN AND WOMEN

Irfan Islami

Fakultas Hukum, Universitas YARSI

Irfan.islami@yarsi.ac.id

ABSTRACT

Marriage is a legal event founded on a mutual commitment between a man and a woman to build a lasting and eternal household. However, as time passes and the life of a husband and wife progresses, problems often become part of the dynamics of domestic life. Domestic problems often result in sexual violence against children and women in particular. The role of the family in creating harmony and comfort has a significant impact on ensuring the safety of women, especially children and wives. Domestic violence, which is often experienced by women and children, is not solely the responsibility of the two individuals in the household. The role of the state is crucial in protecting and resolving issues of sexual violence in accordance with applicable law. This article aims to provide public understanding, particularly regarding family law and how to protect women and children to prevent sexual violence. A good understanding of family law is expected to be a preventative measure against sexual violence against women and children.

Keywords: Violence, Sexual, Children, Women.

A. INTRODUCTION

The family is the smallest unit in a nation's life, playing an active role in the nation's progress. It should not be underestimated and deserves serious attention. To build a better social order, a comprehensive understanding is needed for each family to build a harmonious life order to achieve national ideals. However, understanding of family law development so far seems to be dominated by a focus solely on normative matters. The juridical approach used is burdened only with the permissibility of each family law event.

Family development, which begins with marriage, is a crucial event for humanity. As social beings, humans cannot live alone to meet their needs. Humans, by nature, are created with their respective partners. Marriage matters not only concern the personal affairs of the prospective husband and wife, but also concern the family and community. Therefore, in carrying out a marriage, various preparations, both physical and spiritual, are the most important elements that must be met. The requirements and pillars of marriage form an inseparable whole. In general, marriage is a sacred bond that is closely related to

religious teachings, therefore every religion always links the rules of marriage with religious rules.

The legal norms and procedures governing marriage are essential. The application of legal norms to marriage is particularly necessary to regulate the rights, obligations, and responsibilities of each family member, in order to create a happy, lasting, and prosperous household. However, development that emphasizes only normative law is considered insufficient to address the complexity of family issues in the modern age. In this regard, other approaches or aspects are needed that can be integrated with Islamic family law to create a more comprehensive unity to achieve the goals of marriage.

Complex problems in every family often arise, and they seem unstoppable in maintaining family integrity and harmony. A common problem resulting from disharmony in family life is sexual violence against women and children. The complexity of this problem is certainly not solely the responsibility of the state; every element of society needs to play an active role in resolving existing issues, at least to reduce the number of problems in society.

One example of a case of sexual violence against women and children occurs in Pandeglang Regency, Banten. The Banten Regional Police (Polda Banten) stated that Pandeglang Regency has been the region with the highest number of cases of sexual violence against children and women in Banten Province over the past three years. This was stated by a representative of the Banten Regional Police at an event to strengthen cooperation in handling cases of violence against women and child protection (DP2KBP3A) in Pandeglang Regency. Based on available data, there were 28 cases of sexual violence against children and women in Pandeglang in 2020, 70 cases in 2021, 55 cases in 2022, and 74 cases from January to September 2023.

The exact number of cases of sexual violence in Indonesia is difficult to determine because many cases go unreported. However, the National Commission on Violence Against Women (Komnas Perempuan) noted that over the past thirteen years, sexual violence cases accounted for nearly a quarter of all cases of violence, or 93,960 cases out of all reported cases of violence against women (400,939). This means that 20 women become victims of sexual violence every day. Meanwhile, the Ministry of Women's Empowerment and Child Protection (KemenPPPA), through SIMFONI-PPA, recorded a total of 19,965 cases and 17,197 female victims in 2025. This figure is obtained from service agencies collaborating with KemenPPPA and the National Commission on Violence Against Women, and is dynamic and continuously updated.

One example of sexual violence cases that still falls short of fulfilling victims' sense of justice is forced marriage. Female victims of rape are married to their perpetrators, meaning there is forced sex within the marriage. This can potentially lead to a second sexual assault and endanger the victim's reproductive health (Justina, Komnas Perempuan, 2012). Therefore, preventing sexual violence against children and women is crucial for the public to understand family law, particularly marriage law.

B. DISCUSSION

1. Definition of Sexual Violence and Its Types

According to Law Number 23 of 2004 concerning the Elimination of Domestic Violence, sexual violence or sexual harassment is defined as any act involving forced sexual intercourse in an inappropriate and/or unreasonable manner for a specific purpose. Article 8 explains that sexual violence as referred to includes: a) forced sexual intercourse committed against someone living within the household; b) forced sexual intercourse against another person within the household for commercial and/or specific purposes.

Sexual violence is a form of violence that is more difficult to uncover and address than other forms of violence against women. This is often linked to concepts of societal morality. Women are considered symbols of purity and honor. Therefore, when a woman experiences treatment that "violates" her honor and purity, such as sexual violence, she is viewed as disgraceful. Ultimately, the victim is often blamed for the sexual violence, leading to silence and reluctance to speak out.

The term sexual violence refers to acts of sexual violence involving the abuse of power and trust over the assaulted person. Sexual violence is not always overt. The term "violence," derived from the word "to violate," means "to violate," so sexual harassment is considered a form of violence (Yantzi, 2009: 7). Sexual violence is generally closely associated with violence against both men and women.

Sexual violence is any attack directed at a person's sexuality (whether male or female) committed under duress. Sexual violence is any act of sexual aggression directed at women, whether physical or non-physical, regardless of whether or not there is a personal relationship between the perpetrator and the victim (Mundakir, 2022: 58).

Sexual violence can be defined as any act that violates a person's human dignity based on gender discrimination, targeting a person's body and sexuality,

resulting in physical, psychological, economic, sexual, political, and/or social harm or suffering to the victim (Rahayu, 2021: 342). Essentially, sexual violence is indecent treatment and a violation of human dignity.

According to the World Health Organization (WHO), sexual violence is any act committed with the intent of obtaining sexual favors or other acts directed at a person's sexuality, using coercion, regardless of the victim's relationship status. According to UNICEF, sexual violence is one of the most disturbing forms of child rights violations. Therefore, it is the subject of a specific international legal instrument aimed at protecting children from various forms of violence.

Sexual violence can be classified as physical or verbal, including verbal threats. Physical forms of sexual violence include coercion and rape.

Based on the statement above, various types of sexual violence are identified as being sexual violence. According to the National Commission on Violence Against Women (Komnas Perempuan) report, several forms of sexual violence are:

- 1) Rape, which is genital penetration without consent, either through force or threats.
- 2) Sexual intimidation, which is an act that exploits or takes advantage of a person's sexuality with the aim of causing fear, distress, or psychological distress in the victim, especially women. This act of sexual intimidation can be conveyed directly through words, gestures, or actions of a sexual nature that are unwanted by the victim. Furthermore, sexual intimidation can also be carried out indirectly through media such as letters, text messages, emails, or other forms of communication that contain elements of sexual harassment or threats.
- 3) Sexual harassment, which is any unwanted sexual act such as touching, kissing, or groping someone's body without their consent. Furthermore, using profanity and displaying sexually suggestive material that causes discomfort, offense, or humiliation, potentially leading to health problems, are also forms of sexual harassment.
- 4) Sexual exploitation, which is the abuse of power or trust for sexual gratification and financial gain, such as being forced into pornography or sex trafficking.

Factors causing sexual violence include:

- 1) Victims are easily subdued; perpetrators often perceive their victims as weak and easily subjugated.
- 2) Lust and unfulfilled sexual desires can trigger sexual harassment.
- 3) Having been a victim or having a history of sexual abuse as a child can also be triggers.
- 4) Witnessing; perpetrators may have witnessed sexual abuse firsthand.
- 5) Dependence and addiction to drugs and alcohol can influence the perpetrator's thinking and actions.
- 6) Sexual fantasies; perpetrators often have fantasies involving violence or harassment.
- 7) The habit of watching pornographic videos; this habit triggers sexual fantasies that lead to sexual violence.

The underlying reasons why many victims of sexual violence are reluctant to report include:

- 1) The perpetrator is someone close to the victim.
- 2) Power relations.
- 3) The stigma that suggests victims of sexual violence are not virgins or that their future is ruined.
- 4) Psychological barriers such as fear, shame, and guilt/self-blame for their experiences.
- 5) The victim is pregnant, making them embarrassed to report (Rofiq, 2022).

2. Understanding Family Law in Preventing Sexual Violence

Family law is a branch of law that regulates relationships between family members, including marriage, divorce, child custody, and inheritance. Family law is also known as Family Civil Law or Marriage and Inheritance Law.

Family law plays a crucial role in maintaining family harmony and stability. The primary objective of this law is to protect the rights and interests of family members and ensure fairness in resolving family disputes. Family law encompasses inheritance and marriage law, including divorce, child custody, division of joint property, inheritance, resolving domestic violence, and other matters.

Family law, particularly regarding marriage, also establishes the procedures and requirements for conducting a marriage, the rights and obligations of husband and wife, how to file for divorce, including acceptable grounds for divorce, division of joint property, and child custody. The law also

regulates the mediation and dispute resolution process in divorce, with the goal of reaching a fair and beneficial agreement for all parties involved.

Family law also regulates child custody, establishing the rights and obligations of parents towards children, including physical custody, legal custody, and the right to make important decisions in the child's life. The law also governs the process for determining child custody in cases of divorce or separation, taking into account the child's best interests.

Family law also encompasses protection against domestic violence. The law establishes legal sanctions for perpetrators of domestic violence and provides protection for victims of domestic violence. The law also regulates the process for submitting protection requests and handling domestic violence cases.

Family law in preventing sexual violence includes Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence and Law No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT), which provide the legal basis for protection, handling, and sanctions for perpetrators, as well as the family's obligation to prevent it through education and building a safe environment. Families play a vital role in providing preventative protection by building strong relationships, teaching body boundaries, and reporting cases of violence.

The role of parents in preventing sexual violence is crucial because families are the closest groups to children. The prevention of sexual violence is stipulated in Article 4 of the Regulation of the Minister of State for the Empowerment of Women and Children of the Republic of Indonesia Number 02 of 2010 concerning the National Action Plan for the Prevention and Handling of Sexual Violence Against Children 2010-2014, which states that the prevention of sexual violence against children includes: first, communication, information, and education on the prevention and handling of violence against children; second, policies on preventing violence against children; third, child participation; and fourth, training on the prevention and handling of violence against children (Reliani, 2020).

The role of families, especially parents, in preventing sexual violence is crucial because parents play a significant role in helping children prepare for the transition to life. As the closest group to children, by maximizing their role, a family will become a strong bulwark for its members against various negative influences that may arise from their social environment.

In the reality of society, there are still several cases of sexual violence that are resolved within the family, where the victim of sexual violence, the woman, must marry the perpetrator. When marriage occurs due to a problem or legal violation such as this, it does not guarantee the integrity and harmony of the

household. Therefore, society needs to be equipped with a good understanding of marriage law, so that negative impacts can be minimized in order to create a lasting and harmonious family life.

Marriage law in Indonesia is regulated by Law Number 1 of 1974 concerning Marriage. This law explains the procedures and requirements for establishing a household through the bond of marriage. Broadly speaking, this law regulates the definition of marriage, the requirements for a valid marriage, the legal consequences of marriage (including the rights and obligations of husband and wife and the division of joint property), and regulations regarding marriage and divorce to create a happy and eternal family based on the One Almighty God.

The Marriage Law defines marriage as a physical and spiritual bond between a man and a woman to form a happy and eternal family based on the One Almighty God, and registered in accordance with applicable laws and regulations.

A marriage in Indonesia is valid if it is conducted according to the religious teachings of each party and in accordance with the provisions of the Marriage Law. If a marriage is entered into under duress without the consent of the couple, the marriage is invalid under applicable law, as stipulated in the legal requirements for a valid contract or agreement.

Mutual consent is the agreement of both prospective bride and groom to consummate a marriage. Munir Fuady explained that marriage must be based on the consent of each prospective bride and groom. Therefore, forced marriage is prohibited by law (Fuady, 2015:13).

Marriage is a basic human right protected by the state. Human rights, as regulated by Law Number 39 of 1999, regulate the right to marry in Article 10, which states, "Everyone has the right to establish a family and continue their lineage through a legal marriage." A legal marriage can only occur with the free will of the prospective husband and wife, in accordance with statutory provisions.

Sexual violence, as a crime, can occur during a marriage due to pregnancy. This pregnancy is often used as a justification for marriage. However, such marriages contain elements of coercion or threats that not only affect the woman as the victim of sexual violence but also pose a psychological and social burden for the victim's parents and family.

Forced marriage has a significant negative impact, which can threaten women's mental health, leading to depression, psychological trauma, negative stigma, family conflict, divorce, infidelity, social exclusion, and even suicide due to

despair. Forced marriage can also impact women's reproductive function, such as sexual violence within marriage through forced intimacy, endangering women's education, resulting in dropouts, and can also lead to economic fragility that threatens family unity and can lead to neglect (Wardah, 2023).

3. Forced Marriage According to Criminal Law and Human Rights

Forced marriage is a new crime in Indonesia. Forced marriage is any act of forcing a person under one's authority, guardianship, or custody, or another person, to enter into a marriage for purposes contrary to the nature of marriage.

This forced marriage can actually be considered a form of domestic rape, also known as marital rape. Marital rape is domestic rape that occurs between a husband and wife within a marital relationship. This rape involves the husband forcing the wife to engage in sexual activity, or vice versa. The presence of the element of forced sexual intercourse makes it increasingly clear how forced marriage can lead to sexual violence (Wuri, 2018: 6-7).

Forced marriage in the Criminal Code is also regulated in Article 335 Paragraph 1 of the Criminal Code, which states that "Shall be punished by a maximum imprisonment of one year or a maximum fine of Rp 4,500: (1) Any person who unlawfully forces another person to do, not do, or tolerate something, by using violence, another act, or unpleasant treatment, or by using the threat of violence, another act, or unpleasant treatment, whether against that person or another person."

Although marriage is part of civil law and not categorized as criminal law, coercion is another element that requires separate regulation in the Indonesian legal system. This means that marriage is one issue, while forced marriage is another. Essentially, marriage is a civil legal regulation, while coercion is a criminal legal regulation (Karim, 2023).

4. Forced Marriage of Victims of Sexual Violence According to Islamic Law

Forced marriage, including cases of rape, does not comply with the basic principles of Islamic marriage law. Islamic law requires full consent and freedom in choosing a life partner. In situations of sexual violence or rape, when the victim clearly does not consent, marriage with the perpetrator not only contradicts the principles of Islamic law but also risks degrading the victim's dignity and rights.

Islamic marriage law clearly provides guidelines on how marriage should be conducted with good intentions and based on the consent of both parties. Islamic law strictly prohibits coercion in all its forms, including within the context of marriage.

As a more just solution, Islamic law emphasizes the importance of protecting victims, restoring their rights, and strictly enforcing the law against perpetrators of sexual violence. Therefore, forcing a rape victim to marry the perpetrator not only contradicts Islamic law but also violates fundamental human rights. Therefore, marriage cannot be a legitimate and just solution in cases of rape because it contradicts the basic principles of Islamic law.

In Islam, rape victims have crucial rights that must be respected. These rights include the right to consent to marriage, the right to protection and reparation, the right to justice, and the right to maintain their dignity and honor. Forcing a victim to marry the perpetrator of rape not only harms the victim but also contradicts Islamic teachings, which emphasize the importance of freedom, justice, and human dignity. Therefore, a more appropriate solution in rape cases is fair law enforcement against the perpetrator and the protection and restoration of the victim's rights. The legal basis for addressing the rights of victims of rape and forced marriage must refer to Islamic law, which serves as the primary guideline for honoring human dignity, regulating the freedom to choose a life partner, and protecting victims of sexual violence. The Quran is the primary source of law. Second, the Prophet's Hadith regarding marriage can serve as a secondary reference.

The principle of justice is paramount in the Quran. Islam demands that victims be given the right to choose their own path without coercion, receive adequate protection, and ensure that perpetrators are punished according to their actions. Verse 48 of the Quran, An-Nisa, clearly commands this: "Indeed, Allah commands you to deliver trusts to those entitled to them, and when you judge between people, judge with justice..." (Quran 4:58).

This verse emphasizes that justice must be upheld in every situation, including in cases of rape and the treatment of victims. Forcing a victim to marry a rapist is not justice, as it denies the victim's right to choose her own path and protects her dignity. Individual dignity is a highly protected right under Islamic law. In the context of rape, the victim's dignity must be restored by granting the victim the right to choose her own path, receive adequate protection, and receive justice in accordance with Islamic teachings.

Forced marriage after rape clearly demeans the victim's dignity, as it not only contradicts the principle of free consent, which is a prerequisite for a valid marriage in Islam, but also worsens the victim's psychological and social well-being. Islam teaches that every individual, especially women, has dignity that must be respected, and forced marriage cannot be a legitimate or just solution in

cases of rape. In this case, victims must be given the opportunity to continue their lives with dignity, receive the justice they need, and receive protection in accordance with Islamic principles that prioritize human rights and social justice.

Islam places great emphasis on respect for human dignity, including the protection of women. This dignity stems from Islam's recognition of the worth and dignity of every individual. Allah SWT states in the Quran, Surah Al-Isra, verse 70: "...And indeed, We have honored the children of Adam; We carry them on land and at sea, and We have provided them with good things, and We have favored them with an appropriate excellence over most of those We have created..." (Quran 17:70)

This verse emphasizes that every human being, including women, has dignity that must be respected. In the context of rape, respect for the victim's dignity is paramount, and protecting this dignity is the basis for just and humane legal policies.

The next legal basis is the Prophet's hadith. Bukhari and Muslim narrate: "A widow should not be married until her consent is sought, and a virgin should not be married until her consent is sought." This hadith emphasizes that marriage in Islam must be based on the consent of both parties without coercion.

In cases of rape, when the victim is unable to give free consent, forcing a marriage not only contradicts the aforementioned hadith but also demeans the victim's dignity. In Islamic marital law, the principle of justice is clearly the basis for enforcing just punishment for perpetrators. Resolving rape cases with forced marriage not only contradicts these principles of justice but also risks further harming the victim (Setiawan, 2024).

C. CONCLUSION

Sexual violence against women and children is an intolerable crime. Every perpetrator of sexual violence must be given the appropriate punishment. However, many communities resolve sexual violence cases peacefully and amicably. Many victims of sexual violence still marry their perpetrators to cover up their shame and resolve the issue peacefully. Forced marriages between perpetrators and victims of sexual violence do not guarantee the integrity and harmony of their future marriages. Therefore, public understanding and education regarding family law, particularly regarding marriage law, are essential as a preventative measure to prevent damage to future generations due to forced marriages.

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