

## Forced Marriage in Cultural Practices and Sexual Violence Law

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### Abstract

*This study analyzes criminal law policy regarding forced Marriage disguised as a cultural practice, taking into account current conditions and the legal protection provided by Law Number 12 of 2022 concerning Criminal Law of Sexual Violence (TPKS). This is a problem in itself, considering that several regions in Indonesia still embrace the culture of forced Marriage. At the same time, on the other hand, many parties say that it violates human rights, while many cultural practices then derogate many human rights. Then how does the TPKS Law see forced Marriage, which in some regions is legalized by customary laws? To answer this, this study uses a normative legal research methodology through a statutory approach. The collection of legal materials will involve an examination of relevant regulations, which will then be analyzed comprehensively to arrive at conclusions that answer the research questions. This study find that (1) policies regarding forced marriages conducted under the guise of culture have been regulated in the TPKS, thus changing actions that were previously not considered criminal offenses into criminal offenses that can be subject to legal sanctions. (2) Legal protection against forced Marriage under the guise of culture is divided into two forms of protection, namely preventive protection carried out by the central and regional governments and repressive protection in the form of imposing sanctions on perpetrators, accompanied by various additional sanctions and providing rights for victims during the judicial process and afterward.*

**Keywords:** *Forced Marriage; Sexual Violence Law; Human Rights; Culture Practices*



## Introduction

Legal protection is one of the main priorities of the rule of law to ensure that citizens' human rights are protected, justice is achieved, and order and security are maintained. Therefore, the government always strives to develop policies aimed at providing such legal protection. One concrete step is the enactment of Law Number 12 of 2022 on the Crime of Sexual Violence (UU TPKS), which is a policy that forms regulations<sup>1</sup> to address an alarming situation, namely the rampant cases of forced Marriage based on cultural practices. For example, in Laweng Riaja Village, Amali Subdistrict, Bone Regency,<sup>2</sup> there are frequent cases of forced marriages based on tradition where girls who are to be married off are not given the opportunity to get to know their prospective companions.

Such actions are carried out solely because they follow existing traditions and customs, even though the two parties do not know each other. Similarly, the Sumba tribe is known for the practice of *Kawin Tangkap*, with one of the reasons being matchmaking by parents, where their children who are matched do not know about their Marriage.<sup>3</sup>

Such situations often occur in societies with strong traditions and norms and are considered as a way to maintain traditional and cultural values that are considered important. However, these actions are detrimental to the parties involved, especially if one or both partners do not feel comfortable or even reject the Marriage. It can be a trigger for domestic violence and is prone to divorce<sup>4</sup> because couples who are forced to marry are likely to experience severe psychological and emotional stress,<sup>5</sup> even to the point of experiencing physical or sexual violence. So in line with what Jewkes, Sen, and Garcia-Moreno state,<sup>6</sup> "any form of sexual activity, efforts to initiate sexual acts, unwelcome sexual remarks or advancements, or actions involving

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<sup>1</sup> Sadri Salikhovich Kuzakbirdiev, (2022), "Implementation of law as a factor of ensuring the legal security of modern society," *EDP Sciences*, SHS Web of Conferences 134, 00095.

<sup>2</sup> Marnawati dkk., (2020), "Praktik Kawin Paksa Di Desa Ulaweng Riaja Kecamatan Amali Kabupaten Bone," *SOSIORELIGIUS* 5 no. 2, p. 76

<sup>3</sup> Herman, (2023), "Adat Kawin Tangkap (Perkawinan Paksa) sebagai Tindak Pidana Kekerasan Seksual," *Halu Oleo Legal Research* 5 no. 1, p. 2

<sup>4</sup> Marzuki dkk, (2023), "Pemaksaan Perkawinan Dalam Konteks Kajian Hak Asasi Manusia Dan Undang-Undang Tindak Pidana Kekerasan Seksual," *REUSAM: Jurnal Ilmu Hukum* 10 no. 2, p. 216

<sup>5</sup> Dayu Dayana Zahir, (2020), "Pemaksaan Perkawinan Oleh Orang Tua Dalam Peraturan Perundang-undangan Di Indonesia," *Skripsi*, Fakultas Syariah, Hukum Universitas Islam Negeri Syarif Hidayatullah, Jakarta, p. 29

<sup>6</sup> Sri Wiyanti Eddyono, (2021), "Restorative Justice for Victim's Right on Sexual Violence: Tension in Law and policy Reform in Indonesia", *Journal of South of Asian Human Right* 5, no. 2, p.180

trafficking, or those primarily aimed at infringing upon an individual's sexuality through coercion." Therefore, in line with Dewi Setyowati and Emmilia Rusdiana,<sup>7</sup> households as a form of marriage institution must be able to be a catalyst in preventing all forms of violence.

Enacted on May 9, 2022, the TPKS Law was heralded as a breath of fresh air, especially for women.<sup>8</sup> Where in the law regulates more specifically related to the crime of sexual violence, which, based on Article 1 number 1 of the law a quo, has provided an understanding of the crime of sexual violence, namely:

"Sexual violence crime is any act that fulfills the elements of a criminal offense as stipulated in this law and other acts of sexual violence as stipulated in the law to the extent specified in this law".

There has been research that raises a theme similar to this research, namely Mu'Ammar Wafiuddin, with the title "Sexual Violence Criminal Law on Forced Marriage from the Perspective of Feminist Legal Theory.". This research has similarities with this research in terms of the subject and object of research, namely criminal acts concerning forced Marriage, but different problem formulations, where Mu'Ammar Wafiuddin's research discusses forced Marriage based on the Feminist Legal Theory perspective. Meanwhile, this research is more about criminal law policy, specifically against forced Marriage in the name of culture. In addition, Junita Fanny Nainggolan et al.'s article in 2021 in the Journal of International Law with the title "Forced Marriage under the guise of Cultural Tradition: How is CEDAW Implementation of National Law in Protecting Women's Rights in Marriage?" is also similar and has the same object of study, but the research conducted by Junita Fanny Nainggolan et al. is more directed at international legal studies, while this research is more directed at national law, namely the Law on Sexual Violence.

Based on this description, the author is interested in exploring further whether it is true that the presence of the status quo can be a breath of fresh air. To bring about a more comprehensive discussion, the author limits this research to the following questions: 1) What is the criminal law policy against forced Marriage based on current cultural practices? 2) How is the regulation of legal protection in the TPKS Law against forced Marriage based on

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<sup>7</sup> Dewi Setyowati & Emmilia Rusdiana (2020), Relevance of Criminal Law Formulation in the Law of Domestic Violence Elimination in Indonesia, *JILS (Journal Of Indonesian Legal Studies)* 5, no. 1, p. 108

<sup>8</sup> Henny Rahma Sari, April 12<sup>th</sup> 2022, "Pengesahan UU TPKS Jadi Angis Segar Kaum Hawa", Available on website: <https://www.merdeka.com/peristiwa/pengesahan-uu-tpks-jadi-angin-segar-kaum-hawa.html>, Accessed Juni 17<sup>th</sup> 2023.

cultural practices?

This research is normative research, which, according to the definition of Soerjono Soekanto and Sri Mamudji, is legal research that uses library materials or secondary data as the basis of research by searching for regulations and literature related to the problem under study.<sup>9</sup> Meanwhile, according to Peter Mahmud Marzuki, normative legal research is a process of finding legal rules, principles, and doctrines to answer the legal problems raised.<sup>10</sup> Thus, this normative research involves the analysis of legal materials contained in laws and regulations (laws in books) and legal norms as the object of study, which are related to values regarding human behavior that should be. Normative research focuses more on secondary legal materials available in libraries and other legal materials.

The approach used in this research is the statute approach, which includes research on all laws and regulations relevant to the legal issues being studied.<sup>11</sup> In the statutory approach, researchers study the hierarchy and principles contained in legislation.<sup>12</sup> Researchers also analyze laws and regulations related to the legal issues being discussed, as well as look for the legal basis and purpose of legislation in making laws.

## Discussion

### Legal Policy Against Forced Marriage Based on Current Cultural Practices

Before discussing further policies for preventing the practice of forced Marriage based on culture, it is important to understand the concept of policy comprehensively first. According to Carl J. Federick, quoted by Leo Agustino,<sup>13</sup> policy can be defined as a series of actions or activities proposed by individuals, groups, or governments in a certain environment with the aim of overcoming obstacles and taking advantage of opportunities to achieve certain goals.

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<sup>9</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Published for the Rajagrafindo Persada, 2006), p. 13-14.

<sup>10</sup> Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi Cetakan ke-9* (Surabaya: Published for the Kencana 2004), p. 130

<sup>11</sup> Irwansyah, *Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel* (Yogyakarta: Published for the Mirra Buana Media 2020), p. 133

<sup>12</sup> Peter Mahmud Marzuki, *Op.cit*, p. 137

<sup>13</sup> Leo Agustino, *Dasar-dasar Kebijakan Publik*, (Bandung: Published for the Alfabeta 2008), p. 34

While the view of Birkland in Anthin Lathifah<sup>14</sup> is *that policy has six characteristics, namely: a) designed to address urgent problems and demand attention; b) made in the public interest; c) oriented towards national goals or interests to solve problems; d) ultimately formulated by the government, even though the initial idea comes from entities outside the government or is the result of interactions between government and non-government actors; e) interpreted and implemented by communities and individuals who have diverse perspectives on problems, solutions, and motivations; and f) represent options for the government to implement or avoid them.*

Another case from Leo Agustino<sup>15</sup> states that there are four important things that a policy, namely, must fulfill:

- a. the level of life in the community increases;
- b. there is justice: by the law, social justice, and opportunities for individual achievement and creation;
- c. provide opportunities for active community participation (in discussing problems, planning, decisions and implementation); and
- b. ensure sustainable development.

Specifically, in the context of legal policy, according to Utrecht, the goal is to investigate what actions should be taken to fit social reality.<sup>16</sup> Satjipto Rahardjo defines legal policy as the activity of choosing and the means used to achieve certain social and legal goals in society. The goal is substantial "to be used to express what is contained in society and to achieve what is aspired (*ius constituendum*)."<sup>17</sup> So, based on this explanation, a red thread can be drawn that legal policy is carried out to create a good social order and to create legal protection, both for individuals and society as a whole.

Responding to the situation where there are acts of forced Marriage based on cultural practices, which are also not in accordance with the concept of Marriage as outlined in Article 1 of Law Number 1 of 1974 concerning Marriage, which states that Marriage is carried out with the intention of forming a happy and eternal family (household) based on the Almighty God,. Therefore, it is not surprising that the government classifies

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<sup>14</sup> Anthin Lathifah, (2020). State Marriage and Civil Marriage: The Role of State Policy on Interreligious Marriage in Central Java. *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 15, no. 1, p. 6

<sup>15</sup> Noeng Muhadjir, *Ilmu pendidikan dan Perubahan Sosial: Teori Pendidikan Pelaku Sosial Kreatif*, (Yogyakarta; Published for the Raka Sarasin 2000), p. 15

<sup>16</sup> Abdul Latif dan Hasbi Ali, *Politik Hukum*, (Jakarta: Published for the PT. Sinar Grafika 2014), p. 22-23

<sup>17</sup> Anis Widyawati, (2020), Criminal Policy of Adultery in Indonesia, *JILS (Journal Of Indonesian Legal Studies)* 5, no. 1, p. 176

forced Marriage as an act of violent crime, as stipulated in Article 10 of the TPKS Law, namely:

- (1) Every person who unlawfully forces or places a person under his/her authority or that of another person, or his/her authority to perform or allow a marriage with him/her or with another person, shall be punished for coercion of Marriage, with imprisonment of up to nine (nine) years and/or a maximum fine of Rp200,000,000.00 (two hundred million rupiah).
- (2) Coercion of Marriage, as referred to in paragraph (1), includes:
  - a. marriage of a child;
  - b. forced Marriage in the name of cultural practices or
  - c. forced Marriage of the victim with the perpetrator of rape.

The content contained in paragraphs (1) and (2) cannot be separated, namely the intention of paragraph (2), which wants to say that there are three types of forced Marriage that, when viewed at a glance, are distinguished based on the situation and reasons for the forced Marriage, namely when the child is still underage and forced Marriage occurs, forced Marriage occurs due to cultural practices, where the reason in the form of customs becomes the basis for forced Marriage, and coercion that occurs due to another criminal act, namely rape.

It needs to be understood together that the coercion of Marriage, according to the author, can occur in one type of coercion; for example, A who experienced an act of rape by B, which coincidentally occurred when the rape occurred, A was still 16 years old or was still categorized as a child, or there was a forced marriage based on cultural practices by chance, which was married to a child or someone underage, and this often happens in Bugis society, which is thick with culture, namely *siri'*.

Based on the Article a quo, the elements can be described as follows:

1. Any person  
Every person here, according to Article 1 number 2 of the law, a quo is an individual or corporation.
2. Unlawfully  
The TPKS Law does not define what unlawful means, but when referring to several legal doctrines, two of which are Munir Fuady and Molengraaff, in the following description;  
According to Munir Fuady, Against the law has a scope, namely:<sup>18</sup>
  - a. Conduct that is contrary to the rights of others.

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<sup>18</sup> Munir Fuady, *Perbuatan Melawan Hukum: Pendekatan Kontemporer*, (Jakarta: Published for the Citra Aditya Bakti 2005), p. 4

- b. The rights violated are the rights of a person recognized by law, including personal rights, property rights, property rights, rights to honor and good name;
- c. Acts that are contrary to their legal obligations. So, a show that is contrary to the legal obligations of the perpetrator, where the meaning of legal obligation is an obligation given by law to a person, both written law (law) and unwritten law (contrary to the rights of others according to law);
- d. Acts contrary to decency, namely acts that violate decency which the community has recognized as unwritten law, where if there has been a loss for another party, then the party who suffered the loss can claim compensation;
- e. Acts contrary to prudence or necessity in society, i.e., an act that harms others, do not violate written law but can still be said to violate or be necessary in society.

Meanwhile, according to Molengraaff, unlawful acts not only violate the law but also violate the principles of decency and propriety;

- 3. Forcing to place someone under violence or another person or his power.

This element, according to the author, can be interpreted as forcing someone means putting someone under violence or another person who has strong power or influence over them. In this context, the person being coerced feels they have no choice but to do what the person coercing them asks. This concept is often related to physical coercion, such as the use of violence or the threat of violence to force someone to do something. However, coercion can also be non-physical, such as psychological coercion or coercion exercised through social power or influence;

- 4. To enter into or allow Marriage with him/her or with another person; When structural (by linking the other elements) and grammatical interpretations are made, the author argues that this element is the result of an act, namely unlawful coercion, so that what the coercer wants to happen, namely Marriage either to himself or to another person, occurs.

Forced Marriage, especially based on cultural practices as contained in the Article a quo, can be said to be relatively new. However, according to Article 335, paragraph (1) of the Criminal Code (KUHP):

- (1) Shall be punished by a maximum imprisonment of one year or a maximum fine of three hundred Rupiahs:



1. any person who unlawfully forces another to do, not to do, or to tolerate something by means of violence or by means of a threat of violence, either against himself or against another person.
2. any person who forces another to do, not to do, or to tolerate something by threat of defamation or libel.

Although Article 335 paragraph (1) above does not refer to coercion as a specific act, namely coercion of Marriage based on cultural practices, the Article can ensnare anyone who commits coercion in the event that it is carried out with the threat of violence. However, it needs to be outlined: the regulation of coercion in Marriage. The author sees that it is coercion that is very broad in nature or in terms of a sweeping article, and Article a quo is still widely criticized by several parties because of its unclear nature. Meanwhile, specifically related to the criminal offense of forced Marriage based on cultural practices, only in the form of policies carried out by the court in granting marriage dispensation, including the prohibition for religious courts to grant marriage applications submitted on the basis of custom or tradition if the Marriage is considered to violate human rights.

Although these policies can provide protection for victims and prevent the occurrence of forced Marriage based on cultural practices, there are still challenges in their implementation. Some of these challenges include the lack of law enforcement against perpetrators of forced Marriage, low public awareness of the dangers and adverse effects of forced Marriage, and the persistence of a patriarchal culture and gender discrimination that allow forced Marriage to occur.

Based on the above, forced Marriage, especially those based on cultural practices, is considered a step towards criminalizing an act. Criminalization, according to Sudarto, is a process of determining an act as a criminal act that ends with the formation of regulations that determine criminal sanctions for an act. In this context, criminalization is an integral part of criminal law politics that has a significant impact.

In this regard, previously, the practice of forced Marriage often occurred without any firm legal efforts because there were no rules strong enough for law enforcers to take action against the perpetrators. However, with the effective implementation of the TPKS Law, perpetrators of forced Marriage can be charged. This means that the criminalization policy in the TPKS Law (in this case, forced Marriage based on cultural practices) creates a stronger legal basis to respond to actions that violate human rights. The implication is that perpetrators of forced Marriage are subject to appropriate criminal sanctions, and victims have better access to the protection, remedy, and support they need.



## Legal Protection in the TPKS Law against Forced Marriage Based on Cultural Practices

According to applicable legal standards, Indonesia has an obligation to provide protection for all human rights. This is based on the fact that the state has a responsibility to support, defend, and respect the human rights of its citizens.<sup>19</sup> By providing legal protection, which in this case is "*all forms of efforts to protect human dignity and human rights in the field of law*".<sup>20</sup>

In the legal context, Article 9 of the TPKS Law regulates the prohibition against forced Marriage, whether on cultural grounds or other reasons, and involves criminal sanctions. Forced Marriage includes any form of threat, coercion, or use of violence to force a person to marry without their own consent or will. The threatening action in the Article a quo is a form of repressive legal protection. In addition, there is also preventive legal protection.

Preventive legal protection aims to prevent forced Marriage by educating the public, raising awareness of individual rights, and promoting the values of equality and freedom in marital relations. Meanwhile, repressive legal protection, such as criminal sanctions, aims to take firm action against perpetrators who violate these provisions and provide justice to victims, who, in this case, are victims of forced Marriage. The combination of these two approaches to legal protection is expected to create an environment that is safe, fair, and free from forced Marriage based on culture or other reasons. The following are the preventive and repressive protections contained in the TPKS Law:

### a. Preventive Legal Protection in the TPKS Law

The legal protection that is preventive has been described in Article 1, paragraph 15 of the TPKS Law as all actions or efforts made to eliminate various factors that cause the occurrence of the criminal law of sexual violence and the recurrence of criminal law of sexual violence. This definition leads to general legal protection (not specific to one type of sexual violence crime), meaning that the legal protection of forced Marriage in the name of culture is included in this definition.

Based on Article 79 of the TPKS Law, the central government and regional governments are the ones who carry out the prevention in a fast,

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<sup>19</sup> Ujang Badru Jaman dan Agung Zulfikri, (2022), "Peran serta Masyarakat dalam Pencegahan Kekerasan Seksual dihubungkan dengan UU No. 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual," *Jurnal Hukum dan HAM Wara Sains* 1 no. 5, p. 5

<sup>20</sup> N. P. R. Yuliartini & D. G. S. Mangku, (2020). Legal protection for women victims of trafficking in Indonesia in an international human rights perspective. *International Journal of Criminology and Sociology* 9 no 2, p.1399

integrated, and integrated manner. Through the fields of education, public facilities and infrastructure, government and institutional governance, etc., including families, with due regard to conflict situations, disasters, the geographical location of the region, and other special situations carried out in orphanages, educational units, and other places that have the potential for criminal law of sexual violence.

In order to increase understanding related to the criminal law of sexual violence, the central and regional governments are required to organize education and training for law enforcement officials, government service personnel, and service personnel at community-based service provider institutions.<sup>21</sup> Through the coordination of the Minister and in collaboration with the Minister, who organizes government affairs in the field of law and human rights. In addition, to make prevention effective, the central and regional governments must coordinate regularly and continuously.<sup>22</sup>

Selain daripada Pemerintah Pusat dan Daerah, masyarakat dan keluarga dapat berpartisipasi dalam melakukan pencegahan tindak pidana kekerasan seksual atau yang dalam hal ini adalah pemaksaan perkawinan yang mengatasnamakan budaya. Terhadap partisipasi masyarakat, dilakukan melalui:<sup>23</sup>

- 1) cultivate literacy about sexual violence crimes to all levels of society to prevent sexual violence crimes and not become victims or perpetrators;
- 2) socialize laws and regulations governing criminal law of sexual violence;
- 3) creating environmental conditions that can prevent criminal law of sexual violence.

Family participation in prevention, namely through:<sup>24</sup>

- 1) strengthening education in the Family, both in moral, ethical, religious, and cultural aspects;
- 2) building quality communication between Family members;
- 3) building emotional bonds between Family members;
- 4) strengthening the roles of father, mother, and all Family members so as to build a protective character;

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<sup>21</sup> Lihat Pasal 81. Lihat juga Pasal 1 angka 12, bahwa Lembaga Penyedia Layanan Berbasis Masyarakat adalah lembaga masyarakat berbadan hukum yang memberikan pelayanan untuk Korban, Keluarga Korban, dan/ atau Saksi Tindak Pidana Kekerasan Seksual.

<sup>22</sup> Lihat Pasal 82 UU TPKS

<sup>23</sup> Lihat Pasal 85 ayat (2) UU TPKS

<sup>24</sup> Lihat Pasal 86 UU TPKS

- 5) protecting and preventing Family members from the influence of pornography and access to information containing pornographic elements;
- 6) protecting family members from the negative influence of the environment and promiscuity.

The involvement and role of the community and the Family in preventing the crime of sexual violence is very important and will add insight into sexual violence and encourage people to be more careful.<sup>25</sup>

### **b. Repressive Legal Protection in the TPKS Law**

Regarding repressive legal protection, the TPKS Law is not only aimed at the perpetrator through the threat of sanctions but also at victims through recovery after a criminal act of sexual violence, which in this case is forced Marriage in the name of culture. The threat of sanctions for perpetrators of forced Marriage in the name of culture is outlined in Article 10, paragraph (1), which reads:

Any person who unlawfully forces, places a person under force or another person, or his or her authority to perform or allow Marriage with him or her or with another person, shall be punished for coercion of Marriage, with imprisonment of nine (nine) years and/or a maximum fine of Rp200,000,000.00 (two hundred million rupiah).

Based on the Article a quo, the elements can be described as follows:

- 1) There is a person who unlawfully forces or places another person under his or her force or power;
- 2) The purpose of such coercion or placing is to cause the person to enter into or to consent to a marriage with him or with another person;
- 3) The act of coercion is unlawful, meaning that it is not based on the consent or agreement of the victimized person;
- 4) If proven to have committed forced Marriage, the perpetrator may be subject to a maximum imprisonment of 9 (nine) years and/or a maximum fine of Rp200,000,000.00 (two hundred million rupiah).

Thus, the Article aims to protect human rights and individual freedom in choosing a life partner without coercion or pressure from other parties. Apart from Article 10, also in Article 15, there are reasons for increasing the penalty in the form of an additional 1/3 of the existing penalty in the coercion of Marriage, namely 12 years if it is carried out in: (a) within the scope of the Family; (b) committed by health workers, medical personnel, educators, educational personnel, or other professionals who are mandated

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<sup>25</sup>Ujang Badru Jaman dan Agung Zulfikri, *Loc.cit*

to carry out Handling, Protection, and Recovery; (c) committed by employees, administrators, or officers against persons entrusted or handed over to their care; (d) committed by public officials, employers, superiors, or administrators against persons employed or working with them; (e) committed more than I (one) time or committed against more than 1 (one) person; (f) committed by 2 (two) or more persons in concert; (g) committed against a child; (h) committed against a person with a disability; (i) committed against a pregnant woman; (h) committed against a person in a state of unconsciousness or helplessness; (i) committed against a person in a state of emergency, a state of danger, a situation of conflict, disaster, or war; (j) committed using electronic means; (k) the victim suffers serious injury, severe psychological impact, or an infectious disease.

In Article 16, the judge is also given the obligation to determine the cost of restitution,<sup>26</sup> including the crime of forced Marriage, because the sentence reaches 9 years. Judges are also authorized to impose additional punishment, which is written in the verdict, in the form of:<sup>27</sup>

1. revocation of custody of the child or revocation of guardianship;
2. announcement of the perpetrator's identity and/or
3. forfeiture of benefits and/or assets obtained from forced Marriage.

In addition to criminal punishment, perpetrators of forced Marriage may be subject to measures in the form of rehabilitation, including social rehabilitation, which is carried out under the coordination of prosecutors and periodic supervision by the Minister who organizes government affairs in the social sector and the Minister who organizes government affairs in the health sector. The TPKS Law also provides a form of protection for victims of sexual violence crimes, including the crime of forced Marriage in the name of culture, which includes handling rights, protection rights, and recovery rights.<sup>28</sup>

Handling rights include seven rights that victims have, including the right to information about the handling process and its results, the right to access handling documents, the right to legal services, the right to psychological strengthening, the right to health services, including medical examination, treatment, and care, the right to services and facilities according

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<sup>26</sup>Restitusi merupakan ganti rugi yang diberikan oleh pelaku tindak pidana kepada korban tindak pidana yang dia lakukan. Lihat Andreas Lucky Lukwira, (2017), "Restitusi Sebagai Hukuman Tambahan Yang Bermanfaat Bagi Pelaku dan Korban Tindak Pidana", *Deviance Jurnal Kriminologi* 1 no. 1, p. 57

<sup>27</sup> Pasal 16 ayat (2) UU TPKS

<sup>28</sup> Lihat Pasal 67 UU TPKS

to the needs of the victim, and the right to remove sexual content from electronic media in cases of sexual violence.<sup>29</sup>

The right to protection includes seven rights, such as providing information about protection facilities and services, guaranteeing protection from threats or violence by the perpetrator or other parties, guaranteeing the confidentiality of the victim's identity, protecting victims from demeaning behavior from law enforcement officers, protecting victims from loss of employment, transfer, education, or political access, and protecting victims or whistleblowers from criminal prosecution or civil suits for reports of sexual violence.<sup>30</sup>

The right to remedy is divided into two categories before and during the judicial process. Victims have the right to medical rehabilitation, psychological strengthening, information on rights and the judicial process, information on recovery services for victims, legal assistance, access and accommodation for victims with disabilities, transportation, temporary shelter, spiritual and religious guidance, educational facilities, documentation necessary for victim identification, and removal of sexual content from electronic media in cases of sexual violence.<sup>31</sup>

After the judicial process, victims have the right to ongoing physical and psychological health monitoring and services, community support for their recovery, assistance in using restitution and compensation, documentation required for identification, social security services such as health insurance and other assistance, economic empowerment, and other necessary support identified by the Integrated Service Center for Women and Children and/or Community-Based Service Provider Institutions.<sup>32</sup> In addition, after the occurrence of a criminal offense, the community and Family also participate in helping victims, which in this case are victims of forced Marriage, as is done in terms of prevention.

Based on the explanation above, the enactment of the criminal offense of forced Marriage, including forced Marriage based on cultural practices, has significant further implications in the context of human rights protection, namely, the existence of criminal penalties for acts of forced Marriage, will create a stronger legal basis for providing legal protection both preventive and repressive as also mandated in the constitution. In addition, it provides an opportunity for the community to combat the act of coercion so that it is hoped that a safer and fairer environment will be created for individuals who are potential victims of forced Marriage.

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<sup>29</sup> Lihat Pasal 68 UU TPKS

<sup>30</sup> Lihat Pasal 69 UU TPKS

<sup>31</sup> Lihat Pasal 70 UU TPKS

<sup>32</sup> *Ibid*

## Conclusion

Based on the above discussion, we can conclude the following main points:

1. Currently, criminal law policy against forced Marriage based on cultural practices has been regulated in detail in the Law on Sexual Violence. Previously, laws such as the Criminal Code, the Law on the Elimination of Domestic Violence, and the Child Protection Law also provided related provisions but did not specifically cover forced Marriage stemming from cultural practices. With the enactment of the law on the Crime of Sexual Violence, forced Marriage based on cultural practices is now regulated more comprehensively, reflecting a policy of criminalization, meaning that acts that were not previously considered criminal acts become.
2. Legal protection against forced Marriage based on cultural practices is regulated in the Law on Sexual Violence, specifically Article 9. In this case, Indonesia holds the obligation to protect human rights according to existing legal standards. Such protection includes preventive and repressive legal protection. Preventive legal protection involves efforts to eliminate the factors that lead to forced Marriage. In terms of repressive legal protection, the Law on Sexual Violence provides criminal sanctions to perpetrators, with clear details of the elements and penalties in Article 10, additional penalties in certain situations (Article 15), and the authority of judges to impose additional penalties and determine restitution costs (Article 16). In addition to criminal sanctions, perpetrators can also undergo rehabilitation measures.

## Suggestions

1. (a) It is important to conduct counseling and education efforts to the community about the risks and consequences of forced Marriage, especially if it is done under the pretext of culture. This can be done through educational programs, social campaigns, and community empowerment to increase community awareness and ability to prevent forced Marriage. (b) The government needs to play a role in monitoring and enforcing the law against forced marriages under the pretext of culture. It can be done by establishing a special team consisting of various government agencies to monitor and prevent these acts. (c) The police and prosecutor's office need to be more proactive in handling cases of forced marriages based on culture. In this context, there needs to be coordination and cooperation between the various relevant institutions so that these cases are handled properly in accordance with the applicable law.

2. (a) Impose strict and fair legal sanctions against perpetrators of forced Marriage, especially if the reason used is culture or tradition. (b) Conduct training for law enforcement officials, such as police, prosecutors, and judges, to understand how to identify and handle cases of forced Marriage under the pretext of culture as stipulated in the TPKS Law. (c) Promote fair and effective law enforcement against perpetrators of forced marriages under cultural pretexts and provide adequate protection for victims. (d) Develop an effective rehabilitation system for perpetrators of forced Marriage with government supervision to prevent similar acts from occurring in the future.

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