

## FORCED MARRIAGE OF VICTIMS OF SEXUAL VIOLENCE AS A FORM OF SETTLEMENT IN VICTIMOLOGICAL PERSPECTIVE

Shinta Diva<sup>1</sup>, Gialdah Tapiansari Batubara<sup>2</sup>  
<sup>1,2</sup>Universitas Pasundan, Bandung, Indonesia  
191000089@mail.unpas.ac.id<sup>1</sup>, gialdah.tapiansari@unpas.ac.id<sup>2</sup>



---

**Received:** December 20, 2022; **Revisions:** January 20, 2023; **Published:** February 23, 2023

**Abstract:** Ratification of RUU TPKS has become a strong legal for victims of sexual violence crimes, one of its scopes listed in Article 4 of the UU TPKS on forced marriage. Referring to the Academic Text of the RUU PKS, forced marriage means if any person who abuses power or threats of violences or deceits or persuasion or a series of lies or other psychic pressures so that a person cannot give a real consent to perform a marriage. Through the perspective of victimology, it can be seen the impact of a crime on victims and the protection of victims in the criminal justice system. This research method uses a normative juridical approach which is a research approach by studying, viewing, and examining several theoretical matters concerning legal principles, conceptions, views, theories, legal regulations and the legal system relating to the issues being discussed. This research aims to find out prevent the handling of victims of sexual violence crimes with inappropriate or deviant forms of settlement. One of them is the forced marriage.

**Keywords:** Forced Marriage, Sexual Violence, Victimology

## **I. INTRODUCTION**

Sexual Violence is a worldwide problem that can occur at any time regardless of the place, time of occurrence, and target. Thus, cases of sexual violence need special attention because acts of sexual violence can occur anytime and anywhere.

Given that based on Komnas Perempuan's 2022 CATAHU, it is known that 2021 will be the year with the highest number of cases of Gender Based Violence (KBG) over the last 10 years (2012-2021). In 2021, there was an increase in cases of violence against women, which reached 50% compared to 2020, with a total of 338,496 cases. (Komnas Perempuan, 2022)

The increase in cases of violence against women is of course not spared from several forms of settlement given to victims but not in line with the absolute protection and attention to victims' rights in legal policy. One of them is the victim of a crime of sexual violence with the settlement of forced marriages.

Forced marriage is one of the elements of sexual violence. Forced marriages are sometimes a way of settlement for victims who should be given legal protection according to applicable law. Not by coercion that is contrary to conscience and without the consent of one of the parties. As regulated in Law Number 1 of 1974 Concerning Marriage in article 1, namely: "The 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 Belief in the One Almighty God". Then it was reaffirmed in article 6 paragraph (1) of Law no. 1 of 1974 concerning Marriage which clearly states that "marriage must be based on the consent of the two prospective bride and groom"

So, from the explanation above there are at least 3 elements that include the crime of forced marriage, including:

1. The act of forcing an individual to carry out a marriage;
2. Organized by abusing power either through threats, violence, persuasion, deception, a series of lies, or various other psychological pressures;
3. Impact on an individual who is unable to express consent with sincerity to carry out the marriage.

The focus of this research is to discuss forced marriages against victims of sexual violence as a form of settlement in a victimological perspective with the aim of preventing the handling of victims of sexual violence with inappropriate or deviant forms of settlement. One of its forms is forced marriage.

## **II. METHOD**

This study applies the normative juridical research method which focuses on a research approach by studying, reviewing, and reviewing a number of theoretical matters regarding legal principles, views, conceptions, theories, legal regulations and the legal system related to the issues being discussed. The approach in a normative juridical way aims to get a subject related to the symptoms and objects being studied and are theoretical in nature as the literature and literature relating to the object of research. This research is a subjective interpretation that develops various theories with the aim of obtaining various scientific discoveries. (Soekanto & Mamudji, 1986).

## **III. RESULT AND DISCUSSION**

### **Victims in Victimological Perspective**

Victimology is defined as the science that examines victims, triggers for victims to appear, and the impact that victims receive. It is said to be a science that studies victims because victimology is referred to from the Latin language, namely victim which when translated is victim and logos which when translated is science. Meanwhile, victimology

according to Law Number 13 of 2006 concerning the protection of witnesses and victims, victims are defined as humans who experience physical suffering, mental suffering, and experience economic losses as a result of a criminal act. Arif Gosita once said that a victim is defined as someone who experiences suffering both physically and spiritually arising from an action by himself or from the actions of other individuals that conflict with the interests and human rights of an individual who is suffering. (Gosita, 1993, p.67)

Victimology in its broadest scope explains various aspects surrounding victims of crime, namely the background to the emergence of crime, how an individual can become a victim of crime, how to suppress the emergence of victims of crime, and what are the rights and obligations of victims of crime.

Likewise with victims who have experienced crimes of sexual violence, they must be given protection for the fulfillment of their rights and protection and security for witnesses and victims which can be done through the provision of restitution, medical services, compensation, or various forms of legal assistance by guaranteeing protection in life. , and participate optimally in accordance with human dignity and be protected from discrimination or violence. (Yulia, 2010, p. 45).

This is reinforced by Article 1 paragraph (2) of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims which explains that, "a victim is someone who suffers physical, mental and/or economic loss as a result of a crime". Therefore, it can be stated that a woman is a victim of a crime of sexual violence because the man's neglect of marriage promises has an impact on psychological, physical, sexual, social suffering, is an act or attitude that causes the woman to suffer losses and is a direct result. for neglect and violation of human rights.

Violations of human rights against victims of the crime of sexual violence require victims to have the right to obtain their rights according to Law Number 13 of 2006. Article 5 states:

1. Get protection for personal security, family and property, and free from threats related to the testimony that will be, is being, or has been given.
2. Participate in the process of selecting and determining forms of protection and security support.
3. Present information without pressure.
4. Free from ensnaring questions.
5. Get a translator.
6. Obtain information regarding the progress of the case.
7. Obtain information related to court decisions.
8. Obtain notification when the convict is released.
9. Acquire a new identity.
10. Obtaining a new residence.
11. Get compensation for transportation costs as needed.
12. Obtain legal advice.
13. Get temporary living expenses assistance until the protection deadline expires.

Apart from that, in Article 5 there are a number of other victims' rights in the form of medical assistance and victims of serious human rights violations will be given psychosocial rehabilitation assistance. Based on the further elaboration in Article 6, it is stated that psychosocial rehabilitation assistance is assistance provided by psychologists to victims who have trauma or other psychiatric problems in order to restore the victim's mental condition to normal. Victims with the intermediary of the LPSK also have the right to submit it to court. As in Article 7 paragraph (1) which explains:

1. Comprehensive rights in cases of gross human rights violations;

2. The right to restitution or compensation which is the responsibility of the perpetrator of the crime.

A number of these rights have been fulfilled as valid human rights instruments and are also listed in the jurisprudence of international human rights committees and/or regional human rights courts. The state and the government have legal obligations to encourage, support, and fulfill obligations to provide protection for the community, including victims and witnesses (victims), as ordered by the 1945 Constitution and applicable laws and regulations. In addition to applying laws and regulations on victims and/or witnesses, it is also necessary to implement the principle of equality before the law which is also regulated in Law No. 13 of 2006 concerning Protection of Witnesses & Victims as follows:

- a. Protection Principle

This principle refers to the obligation of the State to provide protection for its citizens, especially for those who have the potential to threaten their physical and mental safety.

- b. The principle of the right to feel safe

This right includes the right not to be tortured or treated in a cruel or inhumane manner as the convention against torture has ratified.

- c. The principle of the right to justice

Suspects and defendants have been given a set of rights in the Criminal Procedure Code and a witness is also obliged to obtain justice. The principle of the right to respect for human dignity.

The principles or rights described above provide an understanding of the power over the rights of victims and/or witnesses which must still be fulfilled based on the applicable laws and regulations.

### **Efforts to Prevent Forced Marriage**

Forced marriage is often a form of settlement for victims of sexual violence. Komnas Perempuan stated that forced marriages are marriages that begin with the deprivation of women's freedom. Forced marriages on rape victims tend to be frequently reported but Komnas Perempuan is still unable to collect data on the number of reported cases, this is one of the many obstacles for women victims of violence in obtaining justice and recovery. In addition, it must also be known if child marriage, especially those with an economic background and leads to an imbalance of power between the child's family and the husband's side, is also categorized as forced marriage. Girls who experience forced marriages are at risk of experiencing sexual violence in the form of forced sexual intercourse or rape during the marriage. (Komnas Perempuan, 2021).

The practice of forced marriage that occurs against victims of sexual violence usually occurs because it is considered to reduce or cover up the shame caused by the crime of sexual violence that occurred to the victim.

The ratification of the TPKS Law as a form of implementation of the ratification of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) or in other words referred to as the Convention on the Elimination of All Forms of Discrimination Against Women was implemented by the Indonesian government in 1984.

Article 16 paragraph (1) of the CEDAW convention states that all participating countries are required to draw up appropriate regulations to free women from discrimination regarding all interests related to marriage and family relations on the basis of equality between women and men, such as freedom of expression, choose a husband and will explore the level of marriage only if the person concerned freely and fully agrees. It should be remembered that the ratification of the TPKS Law has implemented a legal approach with a

women's perspective, which is the solution to creating a legal umbrella for the protection of victims of sexual violence in Indonesia.

Therefore, if a forced marriage occurs against a victim of sexual violence, the perpetrator may be subject to the criminal provisions for forced marriage listed in Article 10 of the TPKS Law. In Article 10 Paragraph (1) of the TPKS Law which states, "every person unlawfully forces, places a person under his or another person's authority, or abuses his power to perform or allow marriage to be carried out with him or with another person, is punished for forced marriage". This crime will receive a maximum prison sentence of nine years and a maximum fine of IDR 200 million.

Then, it is explained in Article 10 Paragraph (2), that fall into the category of forced marriages including forced marriages under the pretext of cultural practices, child marriages, and forced marriages of victims and perpetrators of rape. Forced marriage is classified as sexual violence in accordance with Article 4 paragraph (1) which describes if:

1. Crimes of Sexual Violence can be in the form of:

- a. physical sexual abuse
- b. non-physical sexual harassment
- c. forced sterilization
- d. forced contraception
- e. forced marriage
- f. sexual exploitation
- g. sexual slavery
- h. sexual torture
- i. electronic based sexual violence

Furthermore, in paragraph (2) it is explained that apart from the criminal act of sexual violence described in paragraph (1), the criminal act of sexual violence also includes:

- a. rape
- b. obscenity
- c. acts violating decency that are contrary to the will of the victim
- d. obscene acts against children, sexual intercourse with children, and/or sexual exploitation of children
- e. pornography with children involved or pornography that explicitly displays violence and sexual exploitation
- f. crime of human trafficking intended for sexual exploitation
- g. sexual violence on a household scale
- h. forced prostitution
- i. crime of money laundering with a predicate crime in the form of a crime of sexual violence
- j. other criminal acts that are expressly stated as criminal acts of sexual violence as stipulated in statutory provisions.

Furthermore, in Article 3 it is explained regarding the substance objectives in this rule, namely:

1. Prevent all forms of sexual violence
2. carry out treatment, provide protection and make recovery efforts for victims.
3. carry out law enforcement and carry out rehabilitation of perpetrators
4. Realizing an environment without sexual violence
5. provide guarantees for the non-repetition of sexual violence

Some of the handling efforts above concerning forced marriages against victims of sexual violence, need to be kept in mind because the ratification and application of the TPKS Law has become a strong legal umbrella by providing all forms of comprehensive legal protection for victims of sexual violence. (Himawan, 2015).

## **Legal Protection of Victims of Sexual Violence**

The issue of sexual violence against women is not only a problem in Indonesia, but also a problem in other parts of the world. Jane Robert Chapman, founder of the Center for Women Policy Studies, in Harkristuti Harkrisnowo "revealed that acts of violence against women universally occur in all cultures and countries."

Sexual abuse, including: forcing sexual relations committed against people who live in the household, forcing sexual relations against one person within the scope of the household with another person for commercial purposes and/or certain purposes. Sexual violence refers to any sexual activity, the form can be in the form of assault or non-aggression. The category of assault, causing suffering in the form of physical injury, the category of sexual violence without assault suffers from emotional trauma. Forms of sexual violence included: being seduced, poked, hugged and forced, squeezed, forced masturbation, oral sex, anal sex, and raped.

Protection for victims of sexual violence in law number 12 of 2022 concerning criminal acts of sexual violence is regulated in article 42 which states: Paragraph (1) within 1X24 hours from receiving a report on a crime of sexual violence, the police can provide temporary protection to victim. Paragraph (2) temporary protection as referred to in paragraph (1) is given based on a temporary protection order for a maximum period of 14 days from the time the victim is handled. Paragraph (3) For the purposes of temporary protection as referred to in paragraph (1), the police have the authority to restrict the movement of the perpetrator, both for the purpose of keeping the perpetrator away from the victim within a certain distance and time or to limit certain rights of the perpetrator. Paragraph (4) the restrictions referred to in paragraph (3) are contained in a temporary protection order.

Article 45 paragraph (1) In the event that a suspect or defendant is not detained and there is concern that the suspect or defendant will commit the Crime of Sexual Violence, intimidation, threats and/or violence against the Victim and based on the request of the Victim, Family, investigator, public prosecutor or Companion , the judge can issue a stipulation of restrictions on the movement of the perpetrator, both those aimed at keeping the perpetrator away from the victim within a certain distance and time or limiting certain rights of the perpetrator.

There is also a derivative regulation from a law that was issued earlier, namely the Regulation of the Minister of Education, Culture, Research and Technology Number 30 of 2021 concerning the Prevention and Handling of Sexual Violence in Higher Education. Article 10 of the Minister of Education and Culture states that higher education institutions are required to handle sexual violence through:

- a. accompaniment;
- b. protection;
- c. imposition of administrative sanctions; and
- d. Victim recovery.

The protection of victims in this Permendikbud is regulated in Article 12 (1) Protection as referred to in Article 10 letter b is given to victims or witnesses who have status as students, educators, education personnel, and campus residents. (2) Protection for Victims or witnesses as referred to in paragraph (1) is in the form of:

- a. guarantee of continuity to complete education for students;
- b. guarantee of continuity of work as Educators and/or Education Personnel at the Higher Education concerned;
- c. guarantee of protection from physical and non-physical threats from perpetrators or other parties or the repetition of Sexual Violence in the form of facilitating reporting of physical and non-physical threats to law enforcement officials;

- d. protection of identity confidentiality;
- e. provision of information regarding protection rights and facilities;
- f. provision of access to information on the implementation of protection;

#### IV. CONCLUSION

Through the perspective of victimology, it is explained that it does not only cover the causes why crimes can occur and how an individual becomes a victim in a crime. But it also provides efforts to reduce the number of victims of crime, examines the rights and obligations of victims who experience crime and various forms of protection that need to be given to victims with the aim of fulfilling all their rights as victims of crime.

Coerced marriage which is often used as a solution or form of settlement of sexual violence crimes is a wrong form of action, bearing in mind that most of the victims are always blamed and considered weak so that the behavior of settlement deviations against victims of sexual violence is applied only for their own interests or power without thinking about suffering, physically and spiritually from the victim.

Regulation of the ministers of education, culture, research and number 30 of 2021 concerning the prevention and handling of sexual violence, in Article 12 paragraph (1) the protection referred to in Article 10 letter b is given to victims or witnesses who have status as students, educators, education staff, and campus residents. Paragraph (2) Protection for victims or witnesses as referred to in paragraph (1) is in the form of: guarantee of continuity to complete education for students; guarantee of continuity of work as Educators and/or Education Personnel at the Higher Education concerned; guarantee of protection from physical and non-physical threats from perpetrators or other parties or the repetition of Sexual Violence in the form of facilitating reporting of physical and non-physical threats to law enforcement officials; protection of identity confidentiality; provision of information regarding protection rights and facilities; provision of access to information on the implementation of protection; protection from attitudes and behavior of law enforcement officers that reduce and/or strengthen the stigma against Victims; protection of Victims and/or reporters from criminal charges; civil lawsuits for reported incidents of sexual violence; provision of safe housing; and/or protection of security and freedom from threats related to the testimony given.

#### REFERENCES

- Gosita, A. (1993). Tinjauan Umum Tentang Korban Dalam Tindak Pidana. *Masalah Korban Kejahatan*, 12-23.
- Himawan, A. (2015, November 24). *RUU Penghapusan Kekerasan Seksual Didesak Masuk Prolegnas*. Dipetik Oktober 13, 2022, dari Arkadia Digital Media: <https://www.suara.com/news/2015/11/24/090655/ruu-penghapusan-kekerasan-seksual-didesak-masuk-prolegnas>
- Komnas Perempuan. (2021, Desember 21). *Menguatkan Upaya Penghapusan Perbudakan Modern di Indonesia*. Dipetik Oktober 14, 2022, dari Komnasperempuan: <https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-memperingati-hari-internasional-penghapusan-perbudakan-menguatkan-upaya-penghapusan-perbudakan-modern-di-indonesia-2-desember-2021>
- Komnas Perempuan. (2022). *Peluncuran CATAHU Komnas Perempuan 2022*. Dipetik Oktober 13, 2022, dari Komnas perempuan: <https://komnasperempuan.go.id/kabar-perempuan-detail/peluncuran-catahu-komnas-perempuan-2022>
- Sangalang, Rizki Setyobowo, Perlindungan hukum Terhadap Korban Tindak Pidana Kekerasan Seksual Dalam Lingkungan Pendidikan, *Jurnal Ilmu Hukum Tambun Bungai* Vol. 7 No. 2, September 2022

- Soekanto, S & Mamudji, S. (1986). *Metode Penelitian Skripsi Yuridis Normatif*. Dipetik Oktober 14, 2022, dari contohskripsi: <https://contohskripsi.netlify.app>
- Undang-Undang No.13 th 2006 tentang Perlindungan Saksi & Korban.Diambil Kemabli dari <https://peraturan.bpk.go.id/Home/Details/40178/uu-no-13-tahun-2006>
- Undang-Undang Dasar 1945. Diambil kembali dari <https://www.dpr.go.id/jdih/uu1945>
- Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan. Diambil kembali dari <https://peraturan.bpk.go.id/Home/Details/47406/uu-no-1-tahun-1974>
- Undang-undang No. 12 tahun 2022 tentang Tindak Pidana Kekerasan Seksual.<https://peraturan.bpk.go.id/Home/Details/207944/uu-no-12-tahun-2022#:~:text=UU%20ini%20mengatur%20mengenai%20Pencegahan,seksual%20dapat%20terlaksana%20dengan%20efektif>.
- Undang-undang No. 7 Tahun 1984 tentang Pengesahan Konvensi Mengenai Penghapusan Segala Bentuk Diskriminasi Terhadap Wanita (Convention on The Elimination of All 1Forms of Discrimanation Against Women).
- Yonna Beatrix Salamor<sup>1</sup>, Anna Maria Salamor, Kekerasan Seksual Terhadap Perempuan (Kajian Perbandingan Indonesia-India), *Balobe Law Journal* Vol. 2 No. 1, April 2022.
- Yulia, R. (2010). Perlindungan Hukum Terhadap Korban Kejahatan. *Viktimologi*.