

Forced Marriage as an Unlawful Act in Indonesia: A Comparative Analysis

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Abstract: Marriage is an inner and outer bond between a man and a woman as husband and wife to form happy and eternal family-based God Almighty, therefore, in implementation of marriage must be approved by both parties who carry out the marriage, without any coercion from any party. However, in practice, some marriages are carried out not because the free will of the parties, but of pressure or influence from a third party, unlawfully, coercing, placing someone under his control or another person, or abusing his power to do or allow it to be done with him or with another person, which is called forced marriage. Against forced marriages, in Indonesia, there are civil and criminal legal remedies, specifically in the case of forced marriages. Meanwhile, various legal remedies exist for forced marriages in other countries, such as Australia and United Kingdom. Herefore, it is necessary to make legal comparison to obtain comprehensive perspective, both the regulation, as well the practice the regulation, so that the proper legal framework will be obtained terms of providing legal remedies in the case of forced marriages in Indonesia. Based on this background, the formulation of the problem in this article: 1) legal remedies against forced marriages in Indonesia and 2) legal remedies that can be taken in the case of forced marriages in other countries. The research method in this article is legal research with statute approach, conceptual approach, comparative approach, and case approach. The results of the article: 1) analyze legal remedies forced marriage in Indonesia, 2) describe comparative laws from Australia and UK regarding the handling of forced marriages so that the proper legal framework will be obtained in terms of providing legal remedies for forced marriages in Indonesia.

Keywords: Forced Marriage; Legal Remedies; Unlawfull Act.

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INTRODUCTION

Marriage is a way to maintain human survival, honor, and noble human dignity.¹ In general, marriage is a part of human life in society so noble, noble and sacred, because it regulates the life between a man and a woman in forming a family or household, based on love, tolerance, and working together in carrying out their rights and obligations as husband and wife bound by regulations such as state law, customary law, and religious law.² Marriage is sacred and to be done by a man and an adult woman where there is no coercion from either of them.³

This has become the ratio of Indonesian legislators to form Article 6 paragraph (1) of the Law About Marriage stipulating: "Marriage must be based on the approval of the two prospective brides". This is also parallel to one of the ratio decidendi⁴ decisions of the Constitutional Court Number 22/PUU-XV/2017: "In Article 6 paragraph (1) of Law 1/1974 it is stated that "Marriage is based on the approval of the two prospective brides". Thus, from this provision, the prospective

bride, including the bride, should have the right to agree to her marriage without pressure from other parties.

In reality, *das sollen* (legal regulations) are very difficult to coherent with *das sein* (concrete events), as well as the ideal concept of marriage which should be carried out based on the agreement of the two prospective brides. Not infrequently, marriages occur, not because of the parties' free will, but because of pressure or influence from third parties, such as parents, siblings, and even the surrounding community.⁵ The legislators are aware of this phenomenon of forced marriage, so that the legislators when forming the Law About Marriage, also regulate civil legal remedies, namely the prevention of marriage in Chapter III of Law About Marriage and the annulment of marriage in Chapter IV of Law About Marriage.⁶

Civil legal remedies over time are deemed insufficient⁷, for at least 2 (two) reasons: 1) There are still many phenomena of forced marriage in the community, and 2) The existing legal remedies are considered not to have a deterrent effect on the community. On this basis, a regulation related to criminal law was established, namely Article 10 of Law

¹ Abd. Rozak A. Sastra, *Pengkajian Hukum Tentang Perkawinan Beda Agama (Perbandingan Beberapa Negara)* (Jakarta: Badan Pembinaan Hukum Nasional, 2011), 2

² Luh Suryatni, "Perkawinan Merubah Status Pria Dan Wanita Dalam Kehidupan Di Masyarakat," *Jurnal Ilmiah Hukum Dirgantara* 11, no. 2 (2021): 79, <https://journal.universitassuryadarma.ac.id/index.php/jihd/article/view/769>.

³ Muhammad Fahrezi and Nunung Nurwati, "Pengaruh Perkawinan Di Bawah Umur Terhadap Tingkat Perceraian," *Prosiding Penelitian & Pengabdian Kepada Masyarakat* 7, no. 1 (2020): 82, <http://jurnal.unpad.ac.id/prosiding/article/view/28142>.

⁴ Faizal Kurniawan et al., "The Principle of Balance Formulation as the Basis for Cancellation of Agreement in Indonesia," *Lex Scientia Law Review* 6, no. 1 (2022): 147, <https://journal.unnes.ac.id/sju/index.php/lslr/article/view/55468>.

⁵ Rustan Darwis, "Penentuan Unsur Paksaan Dan Ancaman Sebagai Dasar Pembatalan Perkawinan Di Pengadilan Agama Masamba," *Maddika : Journal of Islamic Family Law* 1, no. 1 (2020): 51, <https://ejournal.iainpalopo.ac.id/index.php/maddika/article/view/1560/>.

⁶ Muchtar Anshary Hamid Labetubun and Sabri Fataruba, "Implikasi Hukum Putusan Pengadilan Terhadap Pembatalan Perkawinan," *Batulis Civil Law Rev* 1, no. 1 (2020): 57, <https://fhukum.unpatti.ac.id/jurnal/ballrev/article/view/430>.

⁷ Riskyanti Juniver Siburian, "Menggeser Paradigma Kontra Terhadap Kriminalisasi Pemerkosaan Dalam Rumah Tangga," *Lambung Mangkurat Law Journal* 5, no. 1 (2020): 63, <https://lamlaj.ulm.ac.id/web/index.php/abc/article/view/118>.

Number 12 of 2022 concerning the Crime of Sexual Violence (hereinafter referred to as Law 12/2022), which essentially criminalizes forced marriage.

The existence of legal remedies in the form of criminal reports by victims of forced marriage in Law 12/2022 is indeed considered by some as an embodiment of modern law in Indonesia because such arrangements provide legal protection for human rights holistically⁸, but on the other hand, this criminalization is considered inappropriate and excessive, because it is considered not following the criminalization theory, such as the first minimalist theory of criminal law from Douglas Husak⁹ which one of the conditions for an action to be finalized is that the act is qualified as non-trivial harm or evil constraint, while the act of forced marriage is not the case and Second, The economic analysis of law theory from Richard Posner which criminalizes actions that cause disruption or damage to the “market”,¹⁰ so that the act of forced marriage which incidentally is not an act that causes disturbance or damage to the “market” is not appropriate to be criminalized minimalization

As with the old maxim *lex sample discharge*

remedium (law must have the remedy),¹¹ in the case of the dualism of appropriate legal remedies against this forced marriage, one solution is to use legal comparisons from other countries in making a legal framework related to handling forced marriage. This is done, so that studies are obtained, both in terms of in abstracto and in concreto. It turns out that there are various legal remedies in other countries, for example in Australia which also criminalizes forced marriages, in England in the case of forced marriages, provides civil and criminal legal remedies specifically in the case of forced marriages, there are also other countries. do not treat forced marriage as a specific criminal offense. Forced marriage may be punished only in as much as it constitutes another crime, such as rape, attempted rape, physical and psychological. Through this legal comparison, a comprehensive perspective can be obtained, both in terms of regulation, as well as the practice of implementing these regulations, so that the right legal framework will be obtained in terms of providing legal remedies in the event of forced marriages in Indonesia.

Based on the description of the background, the formulation of the problem in this article is first, legal remedies against forced marriages in Indonesia and second, legal remedies that can be taken in the case of forced marriages in other countries. To ensure the novelty of this article, a similar previous article will be described and the difference between this article will be explained, namely the article entitled “Determination of the Elements of Coercion and Threats as the Basis for Cancellation of Marriages at the Masamba Religious Court”,

⁸ Xavier Nugraha, Risdiana Izzaty, and Annida Aqiila Putri, “Rekonstruksi Batas Usia Minimal Perkawinan Sebagai Bentuk Perlindungan Hukum Terhadap Perempuan (Analisa Putusan MK No. 22/PUU-XV/2017),” *Lex Scientia Law Review* 3, no. 1 (2019): 53, <https://journal.unnes.ac.id/sju/index.php/lslr/article/view/30727>.

⁹ Mahrus Ali and M. Arif Setiawan, “Teori Hukum Pidana Minimalis Dari Douglas Husak: Urgensi Dan Relevansi,” *Undang: Jurnal Hukum* 4, no. 1 (2021): 246, <https://ujh.unja.ac.id/index.php/home/article/view/271/>.

¹⁰ Richard A. Posner, *Economic Analysis of Law*, fifth edit. (New York: A Division of Aspen Publisher, 1998).

¹¹ Aaron X. Fellmeth and Maurice Horwitz, *Guide to Latin in International Law* (Oxford: Oxford University Press, 2011).

written by Rustan Darwis in Maddika: Journal of Islamic Family Law, Vol. 01, No. 01, July 2020. This article discusses several factors causing forced marriages that can be categorized as elements of coercion and threats to be used as a basis for annulment of marriages with a case study at the Masamba Religious Court.¹² From the focus of the article, it can be seen that the difference in the study only focuses on the factors that can be used as a basis for annulment of marriage according to Islamic religious law, while this paper later in addition to discussing the factor of forced marriage and the mechanism of marriage annulment based on positive law in Indonesia, also discussed legal remedies against forced marriages using comparative laws from other countries.

METHOD

The research method in this article is doctrinal research. The approach used in this article is the statute, conceptual, comparative, and case approach.¹³ The statutory approach examines the problem by analyzing it based on the relevant laws and regulations.¹⁴ There are several laws and regulations such as Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (Law About Marriage), Law Number 12 of 2019 2022 concerning the Crime of Sexual Violence (Law 12/2022), the Compilation of Islamic Law, and so on. The conceptual approach departs from the views

and doctrines that develop in the science of law.¹⁵ The conceptual approach used to examine the primary legal basis related to legal remedies for forced marriage which can be in the form of marriage prevention and repressive legal remedies, namely marriage annulment. Furthermore, the comparative approach is an approach taken to compare a country's laws with those of other countries,¹⁶ in this case UK and Australia, because it turns out that there are various legal arrangements in other countries, for example in Australia which also criminalizes forced marriage, in England in the case of forced marriage, provides civil and criminal legal remedies specifically in the case of forced marriage, there are also countries that do not treat forced marriage as a particular crime. Forced marriage can only be punished to the extent that it constitutes another crime, such as rape, attempted rape, physical and psychological.

For the case study, the final and binding decision analyzed in this article is Decision Number 187/ Pdt.G /2017/ PA.Mpw . and Supreme Court Decision Number 692 K/Ag/2020.

ANALYSIS AND DISCUSSION

Legal Efforts for Forced Marriage in Indonesia

Forced marriage is a social phenomenon often encountered in Indonesian society and has several types when viewed from the motive.¹⁷ The motive for forced marriage can be

¹² Darwis, "Penentuan Unsur Paksaan Dan Ancaman Sebagai Dasar Pembatalan Perkawinan Di Pengadilan Agama Masamba."

¹³ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2014), 133

¹⁴ *Ibid.*

¹⁵ *Ibid.* p.135.

¹⁶ Soerjono Soekanto and Sri Mamuji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)* (Jakarta: Rajawali Pers, 2001), 14.

¹⁷ Deybi Santi Wuri and Anak Agung Istri Ari Atu Dewi, "Pemaksaan Perkawinan Sebagai Faktor Terjadinya Kekerasan Seksual Dalam Rumah Tangga Ditinjau

through arranged marriages, and many occur in families, often children are forced to be married to someone they do not know or do not want to marry.¹⁸ Cases of forced marriage are carried out in various ways, including threats of violence, not being recognized as a child, being expelled from the family lineage, not being given an inheritance, persuasion, and deceit.¹⁹ This is undoubtedly contrary to the provisions of Article 6 paragraph (1) of the Law About Marriage, which stipulates: “Marriage must be based on the approval of the two prospective brides”, and further in the explanation of Article 6 Paragraph (1) of the Law About Marriage, which states: “Because Marriage has the intention that husband and wife can form an eternal and happy family, and in accordance with human rights, marriage must be approved by both parties who carry out the marriage, without any coercion from any party.

Furthermore, in its development, forced marriage is classified as one of the criminal acts of sexual violence regulated in Article 4 letter e of Law 12/2022. The punishment is regulated in Article 10 Law 12/2022, which is in more detail as follows:

Dari Perspektif Hukum Pidana Indonesia,” *Kertha Wicara* 9, no. 5 (2020): 5, <https://ojs.unud.ac.id/index.php/kerhawicara/article/view/58896>.

¹⁸ M. Mohsi, “Analisis Perkawinan Paksa Sebagai Tindak Pidana Kekerasan Seksual Dalam Rancangan Undang-Undang Penghapusan Kekerasan Seksual PKS,” *Al Adalah: Jurnal Hukum dan Politik Islam* 5, no. 1 (2020): 359, <https://www.jurnal.iain-bone.ac.id/index.php/aladalah/article/view/578>.

¹⁹ “Naskah Akademik Rancangan Undang-Undang Tentang Penghapusan Kekerasan Seksual,” *Komisi Nasional Anti Kekerasan Terhadap Perempuan (Komnas Perempuan)*, last modified 2017, accessed September 18, 2022, <https://komnasperempuan.go.id/pemetaan-kajian-prosiding-detail/naskah-akademik-rancangan-undang-undang-tentang-penghapusan-kekerasan-seksual>.

Table 1.
Criminal Legal Efforts for Forced Marriage

Legal basis	Article 10 Law 12/2022
Offense	General offense
B a s i c Criminal	imprisonment for a maximum of 9 (nine) years and/or a maximum fine IDR 200,000,000.00 (two hundred million rupiah). (Article 10 Paragraph (1) Law 12/2022.
Criminal Weighting	The penalty is added by 1/3 (one-third), if it fulfills the provisions as stipulated in Article 15 Paragraph (1) Law 12/2022, for example, it is committed within the family, committed to children, and carried out against persons with disabilities. (More details in Article 15 Paragraph (1) Law 12/2022.)
Additional Criminal in the form of Restitution	In addition to imprisonment, fines, or other crimes according to the provisions of the law, judges are required to determine the amount of restitution for crimes of sexual violence which are punishable by imprisonment of 4 (four) years or more (Article 16 Paragraph (1) Law 12/2022). With regard to the provisions for restitution, the judge may impose additional penalties in the form of: <ol style="list-style-type: none"> revocation of child custody or revocation of pardon; announcement of the identity of the perpetrator; and/or deprivation of profits and/or assets obtained from the Crime of Sexual Violence. (Article 16 Paragraph (2) Law 12/2022.

Source: Author’s Analysis Results.

From the table, it can be understood that the criminal act of forced marriage is a general offense with the main penalty of imprisonment and additional punishment of restitution. The

criminal threat is formulated as a burden if the criminal act of forced marriage is committed against a child, a person with a disability, or a child with a disability. The criminal law efforts are expected to have a deterrent effect, and provide prevention, protection, and access to justice for victims of forced marriages.

In the Academic Paper of the Draft Law 12/2021 it is stated that the criminal act of forced marriage is any person who abuses power with violence or threats of violence or trickery or seduction, or a series of lies or other psychological pressure so that a person cannot give real consent to marriage.²⁰ From this definition, there are at least 3 (three) key elements/elements of the criminal act of forced marriage, namely:²¹

- a. the act of forcing someone to marry;
- b. carried out by abusing power either by violence or threats of violence or deception or persuasion or a series of lies, as well as other psychological pressure²²;
- c. This results in a person not being able to give real consent to marriage.

The description as above shows that forced marriage can be carried out through physical coercion/threats in the form of physical and non-physical or verbal violence in the form of threats of violence, trickery, a series of lies, or other psychological pressure, as well as child marriage, forced marriage in the name of the practice culture, or forced marriage of the victim with the perpetrator of the rape is a form of forced marriage.

In addition to criminal law remedies

in Law 12/2022, other legal remedies against forced marriages of a civil nature, namely preventive legal remedies, namely through marriage prevention as regulated in Chapter III of the Law About Marriage, which are basically legal remedies that third parties can use before the holding of the marriage, and repressive legal remedies in the form of marriage annulment are regulated in Chapter IV of the Law About Marriage, which in essence is a legal remedy that can be used by the husband or wife and third parties after the marriage takes place. The terms and conditions for the existence of civil legal remedies in the form of prevention and cancellation of marriages are as follows:

Table 2.

Explanation of Marriage Prevention	
Aspect	Marriage Prevention
Legal basis	Chapter III Law About Marriage
Submission Time	before the marriage takes place
Authorities file legal remedies	<ul style="list-style-type: none"> - the families in a straight line up and down, relatives, marriage guardians, guardians, guardians of one of the prospective brides and interested parties. (Article 14 Paragraph (1) Law About Marriage). - The appointed official is obliged to prevent the marriage from taking place if the provisions in Article 7 paragraph (1), Article 8, Article 9, Article 10 and Article 12 of this Law are not fulfilled. (Article 16 Law About Marriage). - A marriage registrar is not allowed to carry out or assist in a marriage if he or she is aware of a violation of the provisions in Article 7 paragraph (1), Article 8, Article 9, Article 10 and Article 12 of this Law even though there is no marriage prevention. (Article 20 Law About Marriage).

²⁰ *Ibid*, 98.

²¹ *Ibid*.

²² Ayu Utami, "Analisis Yuridis Penyimpangan Hak Perwalian Orangtua Terhadap Tindakan Pemaksaan Perkawinan Di Bawah Umur," *Lex Lata Jurnal Ilmiah Ilmu Hukum* 3, no. 3 (2021): 359, <http://journal.fh.unsri.ac.id/index.php/LexS/article/view/1230>.

Material Terms	<ul style="list-style-type: none"> - Marriage can be prevented, if there are parties who do not meet the requirements to enter into marriage. (Article 13 Law About Marriage).¹ - one of the prospective brides is under guardianship, so that the marriage will actually cause misery for the other prospective brides. (Article 14 Paragraph (2) Law About Marriage). - still bound by one of the two parties and on the basis of the existence of marriage (Article 15 of Law About Marriage) - the provisions in Article 7 paragraph (1) Article 8, Article 9, Article 10 and Article 12 in this law are not fulfilled. (Article 16 Paragraph (1) Law About Marriage).
Application	Marriage prevention is submitted to the Court in the jurisdiction where the marriage will take place by notifying the marriage registrar as well. (Article 17 Paragraph (1) Law About Marriage).
Because of law	<ul style="list-style-type: none"> - Marriage cannot take place if the prevention has not been revoked. (Article 19 Law About Marriage). - The prevention of marriage can be revoked by a court decision or by withdrawing the petition for prevention to the court by the person who prevented it. (Article 18 Law About Marriage).

Source: Results of the Author's Analysis.

Table 3.
Explanation of Marriage Cancellation

Aspect	Marriage Cancellation
Legal basis	Chapter IV Law About Marriage
Submission Time	after the marriage

Authorities file legal remedies	<ul style="list-style-type: none"> a. families in a straight line of descent from husband or wife; b. husband or wife; c. The authorized official only as long as the marriage has not been decided; d. The appointed official is paragraph (2) Article 16 of this Law and any person who has a direct legal interest in the marriage, but only after the marriage is dissolved. (Article 23 Law About Marriage).
Material Terms	<ul style="list-style-type: none"> - The marriage can be annulled if the parties do not meet the requirements for the marriage. (Article 22 Law About Marriage). - the marriage is still bound by itself to one of the two parties and on the basis of the existence of the marriage, it can apply for the annulment of a new marriage (Article 24 of the Law About Marriage). - Marriages which are held in front of an unauthorized marriage registrar, illegitimate guardian-marriages or which are held without the presence of 2 (two) witnesses may be requested for the cancellation by the families in a straight line up from the husband or wife, the prosecutor and the husband or wife. . (Article 26 Paragraph (1) Law About Marriage). - A husband or wife can apply for an annulment of marriage if the marriage takes place under the threat of breaking the law. (Article 27 Paragraph (1) Law About Marriage). - A husband or wife can apply for an annulment of marriage if at the time of the marriage there is a misunderstanding about the husband or wife. (Article 27 Paragraph (2) Law About marriage).

Application	An application for annulment of marriage is submitted to the court in the jurisdiction where the marriage took place or at the place of residence of both husband and wife, husband or wife. (Article 25 Law About Marriage).
Because of law	<ul style="list-style-type: none"> - Marriage is annulled. - The cancellation of a marriage begins after a court decision has permanent legal force and is valid from the time the marriage takes place. (Article 28 Paragraph (1) Law About Marriage). - The decision is not retroactive to: <ul style="list-style-type: none"> a. Children born of the marriage; b. A husband or wife who acts in good faith, except for joint property, if the annulment of the marriage is based on the existence of another previous marriage; c. Other third persons are not included in a and b as long as they obtained the rights in good faith before the decision on the annulment has permanent legal force. (Article 28 Law About Marriage).

Source: Results of the Author's Analysis.

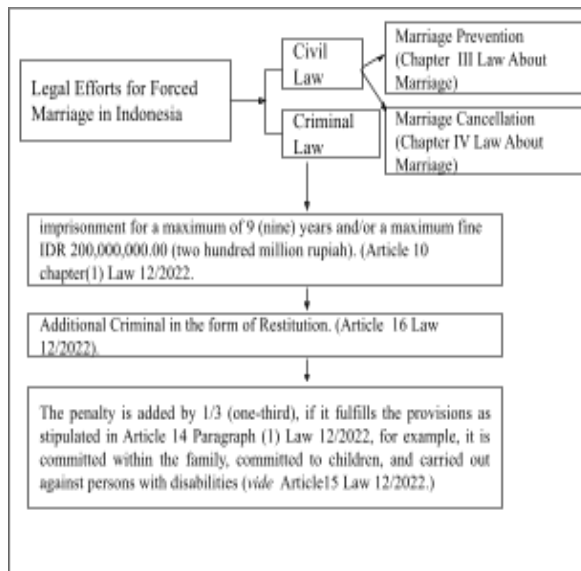
For example, the civil legal remedies described above can be seen in Decision Number 187/ Pdt.G /2017/ PA.Mpw . which in fact, one of the causes of the marriage was because the Respondent threatened the Petitioner to be responsible for the Respondent's pregnancy and threatened to report it to the police, as well as destroy the applicant and the applicant's family, so that the Petitioner was forced to marry the Respondent. However, it turned out that the Respondent was not pregnant. On this basis, the judge canceled the marriage with one of the following considerations: "Considering, that based on the information of the Petitioner which is not disputed, it has also been corroborated by the statements of the family, namely the mother

and father of the Petitioner, it has been proven that the Petitioner's marriage was carried out accompanied by fraud, namely that Respondent I has lied to the Petitioner by claiming to be pregnant as a result of sexual relations with the Petitioner before marriage and the threat of Respondent I that the Respondent's family will destroy the Petitioner if the Petitioner is not married to Respondent I (bold by the author);"

Regarding the form of threat which is qualified as a form of coercion, thus canceling the marriage does not mean the Petitioner's subjective feeling. The judge will still assess whether the act is a form of coercion or not. For example, this can be seen in Decision Number 692 K/Ag/2020. In the decision, the Cassation argued that the marriage was coercive, because many parties of the Respondent/ Appellate /Respondent visited the parents' house of the Petitioner/Appellate/Appellant of Cassation, so that the Petitioner/Appellate/ Appellant of Cassation felt compelled to do the marriage. However, the panel of judges in their legal deliberations explained: "That the presence of the family of the Respondent/ Appellant /Respondent of Cassation, amounting to nearly a hundred people who were outside the parents' house of the Respondent/ Appellate during the deliberation, cannot be considered as a form of coercion or a threat that violates the law as referred to in paragraph (1). in Article 27 paragraph (1) of the Law About Marriage Jo. Article 71 letter (f) and Article 72 paragraph (3) of the Compilation of Islamic Law (bold by the author).", so the judge rejected the application for annulment of the marriage.

The description above shows that legal remedies for forced marriage in Indonesia are as follows:

Scheme 1. Legal Efforts for Forced Marriage in Indonesia



Source: Author's Analysis Results

Legal Efforts for Forced Marriage in Other Countries

In 2016, an estimated 15.4 million people were living in forced marriage. Of this total, 6.5 million cases had occurred in the previous five years (2012-2016), and the remainder had taken place before this period but had continued into it.²³ Whereas, International Human Rights Standards has made provisions about the right to marry with full and free consent, among others regulated on:

- Article 16 The Universal Declaration on Human Rights
- Article 1, 2, and 3 The Convention on Consent to Marriage, Minimum Age for

Marriage and Registration of Marriages

- Article 10 (1) The International Covenant on Economic, Social and Cultural Rights
- Article 23 (2) and (3) International Covenant on Civil and Political Rights

These provisions emphasize that marriage is recognized as a right with equality between the female and male partners, that the consent of the prospective partner is free and full so that the marriage must be freely contracted and with the full consent of both parties.²⁴ A State may only refuse to recognize the validity of a marriage if, according to the law of that State, one of the spouses, at the time of marriage, among other things, did not freely consent to the marriage.

Within the international legal and normative framework, it has been extended to end a forced marriage, considered a harmful cultural practice and form of gender-based violence.²⁵ Forced marriage is predominantly regarded as a human rights problem and debated in the context of violence against women.²⁶ The legal instruments that have been adopted highlight the importance of the participation of various States in enacting laws that prevent the violation of rights arising from

²⁴ "Equal Rights And Responsibilities In Marriage," *United Nation Women*, last modified 2011, accessed August 27, 2022, <https://www.endvawnow.org/en/articles/766-equal-rights-and-responsibilities-in-marriage.html>.

²⁵ Vidal Gallardo, "Ilegalidad Del Matrimonio Forzado Como Manifestación De Una Forma De Violencia De Género, (Ley Orgánica 1/2015, De 30 De Marzo, Pro La Que Se Modifica La Ley Orgánica 10/1995, De 23 De Noviembre, Del Código Penal)," *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado* 40 (2016): 1–32.

²⁶ Deutscher Juristinnenbund, "Stellungnahme Zur Öffentlichen Anhörung Des Bundestagsausschusses Für Familie, Senioren, Frauen Und Jugend Am 19," *Bekämpfung von Zwangsverheiraten*, last modified 2006, <http://www.djb.de>.

²³ The International Labour Office, Walk Free Foundation and International Organization for Migration The International Labour Office, Walk Free Foundation, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (Geneva: The International Labour Office (ILO), Walk Free Foundation, and International Organization for Migration (IOM), 2017).

this practice including:

Australia

Australia's response to forced marriage forms part of the Australian Government's strategy to combat severe forms of exploitation, including human trafficking, slavery, and other slavery-like practices such as servitude and forced labor.²⁷ 223 cases relating to human trafficking and slavery offenses were reported to the Australian Federal Police (AFP) in the 2019-20 financial year. Of these, 92 were for forced marriage. Of those forced marriage reports, 51% were victims under the age of 18. Under the Commonwealth Criminal Code Act 1995.²⁸

Criminal law

Article 270.7A Criminal Code Act 1995 interprets forced marriage as either party to the marriage entered into the marriage (the victim) without freely and fully consenting or when the marriage was entered into, either party to the marriage (the victim) was under 16. For that, in Article 270.7B about Forced marriage offenses, if the victim is over the age of 18, the penalty is up to seven years imprisonment.²⁹ Meanwhile, if the victim is

under the age of 18, the penalty is up to nine years' imprisonment. Suppose the victim is under the age of 18 and taken overseas for the purpose of forced marriage. In that case, this may constitute trafficking in children offence, which carries a penalty of up to 25 years imprisonment.

Civil Law

The Commonwealth Marriage Act 1961 includes provisions whereby a marriage may be void if the consent of a party was not real, or if a party was not of marriageable age. The Marriage Act permits a marriage where one party is between 16 and 18 years of age, with the required consent (usually parental) and an Australian court order from a judge or magistrate authorizing the marriage.³⁰ It is illegal for any person under the age of 16, or two people under 18, to marry. This provision was emphasized under section 270.7A of the Criminal Code Act 1995, a marriage is void if a party entered into an arrangement without free or full consent. A party might have been coerced, threatened, or deceived into a marriage, or they might be incapable of understanding the nature and effect of the marriage ceremony.³¹

United Kingdom

As a member of the EU, according to Article 37 (1) of the Istanbul Convention, state parties are under a duty to criminalize "the in-

²⁷ Frances Simmons and Jennifer Burn, "Without Consent: Forced Marriage in Australia," *Melbourne University Law Review* 36, no. 3 (2012): 970, <https://search.informit.org/doi/10.3316/ielapa.454665687686214>.

²⁸ Laura Vidal, "Rethinking Australia's Response To Forced Marriage," *Monash University*, last modified 2020, <https://lens.monash.edu/@politics-society/2020/10/26/1381571/rethinking-australias-response-to-forced-marriage>.

²⁹ Heli Askola, "Responding to Vulnerability? Forced Marriage and the Law," *University of New South Wales Law Journal* 41, no. 3 (2018): 989, <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2018/09/ASKOLA-Advanced-Access.pdf>.

³⁰ Vaibhav Chadha and Uddhav Tiwari, "Legal Efforts To Curb Child Marriage In India, USA And Australia: A Comparative Analysis," *Age of Human Rights Journal* 463-489, no. 18 (2022), <https://revistaselctronicas.ujen.es/index.php/TAHRJ/article/view/6582>.

³¹ Patrick Parkinson, "Tricked into Marriage," *Melbourne University Law Review* 42, no. 1 (2018), <https://search.informit.org/doi/10.3316/agispt.20181127004264>.

tentional conduct of forcing an adult or a child to enter into a marriage”.³² Under Article 37 (2) of the convention this duty also extends to criminalize “the intentional conduct of of-fine an adult or a child to the territory” of a state with the purpose of forcing the person to enter into a marriage. With this, forced marriage defined as criminal offence in seven EU Member States, These states are Austria, Belgium, Croatia, Cyprus, Denmark, Germany and the United Kingdom.

In the United Kingdom, where forced marriage is not a criminal offense, the Ministry of Justice’s statistics show an average of some 33 Forced Marriage Protection Orders issued each quarter since mid-2009, which corresponds to some 130 protection orders per year.³³ Now there have been legal reforms and developments to the establishment of National cooperation and coordination mechanism through the United Kingdom’s Forced Marriage Unit, as the body that will also facilitate the repatriation of the victims.³⁴ In 2019, the Forced Marriage Unit provided support and advice related to a possible forced marriage in 1,355 cases via its public helpline and email inbox. This represents a 10% decrease on 2018 cases.³⁵

³² María Barcons Campmajó, “Forced Marriages in Europe: A Form of Gender-Based Violence and Violation of Human Rights,” *Age of Human Rights Journal*, no. 14 (2020): 12, <https://revistaselectronicas.ujen.es/index.php/TAHRJ/article/view/5474>.

³³ Ministry of Justice Statistics bulletin, *Court Statistics Quarterly January to March 2013* (United Kingdom: Ministry of Justice, 2013).

³⁴ Khatidja Chantler and Melanie McCarry, “Forced Marriage, Coercive Control, and Conducive Contexts: The Experiences of Women in Scotland,” *Violence Against Women* 26, no. 1 (March 1, 2019): 89–109, <https://doi.org/10.1177/1077801219830234>.

³⁵ Mohammad Mazher Idriss, “Abused by the Patriarchy: Male Victims, Masculinity, ‘Honor’-

Criminal law

This Country has made forced marriage a specific criminal offense, Where the Anti-social Behavior, Crime and Policing Act 2014 envisages imprisonment up to a maximum of seven years for the offense of forced marriage (Section 121 of the Act for England and Wales and Section 122 for Scotland).³⁶ In 2017 the Government introduced lifelong anonymity for victims of forced marriage to encourage more victims of this hidden crime to come forward.

Civil Law

This Country also keeps statistics on civil injunctions forbidding perpetrators of forced marriage to contact their victims (forced marriage protection orders). They addressed forced marriage primarily through civil remedies. The Forced Marriage (Civil Protection) Act 2007 gives courts in England and Wales the power to issue “forced marriage protection orders” to prevent forced marriage or protect victims.³⁷ Victims can, for instance, seek: a protection order, protecting them from, say, harassment; a non-molestation order; or an order concerning their right to occupy the marital home. “Relevant third parties”, including the police or local authorities, may also apply for a forced marriage

Based Abuse and Forced Marriages,” *Journal of Interpersonal Violence* 37, no. 13–14 (February 25, 2021): NP11905–NP11932, <https://doi.org/10.1177/0886260521997928>.

³⁶ Mohammad Mazher Idriss, “Forced Marriages—The Need for Criminalisation?,” *Criminal law review*, no. 9 (September 1, 2015): 687–703.

³⁷ Richard Griffith, “The Forced Marriage (Civil Protection) Act 2007,” *British Journal of Midwifery* 18, no. 2 (2010): 125–126, <https://www.magonlinelibrary.com/doi/abs/10.12968/bjom.2010.18.2.46412>.

protection order.³⁸ Forced marriage protection orders expressly prohibit the practice, inducement or aiding of forced marriage. A breach of a forced marriage protection order is punishable with imprisonment up to five years (Anti-social Behavior, Crime and Policing Act 2014, Section 120).³⁹

Other EU Member States do not treat forced marriage as a specific criminal offense. Forced marriage is only punishable to the extent that it constitutes another crime, such as rape, attempted rape, physical and psychological violence, sexual violence, bodily harm, ill treatment, assault, false imprisonment, infringement of freedom and integrity, psychological duress, sexual duress, kidnapping and abduction, offences against the person, infringement of sexual integrity or honour crime. For instance, In Sweden, forced marriage is punishable as a form of coercion when a person forces someone else into marriage through the use of assault, violence or threats thereof, specified in Article 4 ch. 4c Brottsbalken (The Swedish Criminal Code).⁴⁰ Which makes forced marriage under Sweden law is Immoral but not illegal.

The explanation regarding the compari-

son of legal remedies for forced marriage in various countries, including Indonesia is as follows:

Table 5.
Comparison of legal remedies for forced marriage in various countries

Country name	Legal effort	Legal basis
Indonesia	Criminal	Article 10 Law 12/2022
	Civil	Chapter III Law About Marriage, Chapter IV Law About Marriage
Australia	Criminal	Article 270.7A and B Criminal Code Act 1995
	Civil	The Commonwealth Marriage Act 1961, Article 270.7A of the Criminal Code Act 1995
United Kingdom	Criminal	the Anti-social Behavior , Crime and Policing Act 2014 (Article 121 for England and Wales and Article 122 for Scotland)
	Civil	The Forced Marriage (Civil Protection) Act 2007

Source: Results of the Author's Analysis.

CONCLUSION

1. Legal remedies against forced marriages in Indonesia are divided into civil and criminal legal remedies. Civil legal remedies are divided into preventive legal remedies, namely through marriage prevention as regulated in Chapter III of the Law About Marriage, which in essence are legal remedies that third parties can use before the marriage takes place, and repressive legal remedies in the form of annulment of marriages regulated in Chapter IV Law. About Marriage, which is basically a legal remedy that husband or wife and

³⁸ Ruth Gaffney-Rhys, "The Development of the Law Relating to Forced Marriage: Does the Law Reflect the Interests of the Victim?," *Crime Prevention and Community Safety* 16, no. 4 (2014): 269–293, <https://doi.org/10.1057/cpcs.2014.11>.

³⁹ Aisha K. Gill, Pamela Cox, and Ruth Weir, "Shaping Priority Services for UK Victims of Honour-Based Violence/Abuse, Forced Marriage, and Female Genital Mutilation," *Howard Journal of Crime and Justice* 57, no. 4 (2018): 576–595, <https://onlinelibrary.wiley.com/doi/abs/10.1111/hojo.12287>.

⁴⁰ Johanna Sabel, "Child Marriage, Only For Some- An Argumentation Analysis Of The Arguments Regarding Child Marriage In The Swedish Political Arena" (Malmö University, Faculty of Culture and Society, 2019), <http://mau.diva-portal.org/smash/record.jsf?pid=diva2%3A1483368&dsid=1250>.

third parties can use after the marriage takes place. Meanwhile, the criminal law remedies are as stated in Article 10 Law 12/2022, with a maximum imprisonment of 9 (nine) years and/or a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah), as regulated in Article 10 Paragraph (1) Law 12/2022. The crime of forced marriage is a general offense with the threat of imprisonment and additional punishment for restitution as stipulated in Article 16 Law 12/2022. The criminal threat is formulated as a burden (one third) if the criminal act of forced marriage is committed against a child, a person with a disability, or a child with a disability as stipulated in Article 15 Law 12/2022.

2. Legal efforts for forced marriage in other countries are motivated by: behind the right to marry with full and free consent which emphasizes the importance of the free and full consent of the prospective partner. In this case, civil and criminal legal remedies exist in various countries such as Australia and UK. To enforce the law of forced marriage, Australia regulates it in the Criminal Code Act 1995 with a criminal penalty of up to 7 years in prison. The United Kingdom with the Anti-social Behavior, Crime and Policing Act 2014 envisages imprisonment up to a maximum of seven years for the offense of forced marriage. Meanwhile in the civil law, Australia has regulated that marriage is void if a party entered into an arrangement without free or full consent and United Kingdom apply “forced marriage protection orders” to prevent forced marriage or protect victims, as for this country also establish national cooperation and coordination mechanism through Forced

Marriage Unit, which emphasize and facilitate the repatriation of the victims as a distinctive way from other countries to protect victims from forced marriage that can be referred for the better in Indonesia’s forced marriage enforcement.

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