

Muhammad Zainuddin Sunarto¹, Fadiq, Suwandi³

AN ANALYSIS OF THE CRIMINALIZATION OF FORCED MARRIAGE FROM THE PERSPECTIVE OF DZARI'AH THEORY

^{1,2,3}UIN Maulana Malik Ibrahim Malang
Email: zain2406@gmail.com

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Abstract: *The practice of forced marriage that is cultured in society has many negative effects, one of which is that women are a group that is vulnerable to various forms of domestic violence, both physically, psychologically, sexually, and economically. Criminal law is expected to overcome the high rate of domestic violence that occurs due to forced marriage. In the case of forced marriage, criminal law is important in anticipation of domestic violence. The focus of this research is how forcing marriage as a criminal act uses the theory of dzari'ah. The factors that affect the occurrence of forced marriage are patriarchal culture and ideology that are socialized in society. In the patrilineal system, marriage is often a tool to strengthen inter-clan or family relationships. The correlation between forced marriage and the right of ijbar wali shows that the practice of forced marriage in the community is also greatly influenced by the right of ijbar wali. The criminalization of forced marriage has been by dzari'ah, in practice there is a certain motivation from the perpetrator of coercion to make the victim forced to carry out marriage on the one hand, and on the other hand, the consequences arising from the marriage on which one of the spouses is forced to carry out the marriage. The TPKS Law has translated the basic values of Grundnorm into daily legal practice. This shows how the implementing norm expresses Grundnorm's values through concrete legal sanctions that are in line with the mandate of the 1945 Constitution to protect citizens.*

Keywords: *Criminalization; forced marriage; dzari'ah.*

INTRODUCTION

The dominant power in a family is held by men, this cannot be separated from the legal and social structure that underlies it. The legal and social structure in a territory gives men significant power over women (Suhandjati, 2018). Islamic law explains that men have great power in performing marriage or even ending the marriage itself through divorce, while women have limitations in their rights.

In Indonesian culture, men are responsible for protecting and retaining family members, as well as meeting the needs of the family as a whole (Aisyah, 2013). This has an effect on the element of mastery at all levels controlled by men. This means that career advancement in various professions occurs only among men, while women are only involved in affairs related to reproduction (Hanum, 1997). The dominance of parents and patriarchal structures in the practice of underage marriage is still very dominant in Indonesia. This is one of the factors that causes the practice of forced marriage or forced marriage to still thrive in Indonesian society (Amelia, 2020).

Forced marriage also occurs not only because of the social structure of a society but there are customary and cultural factors behind it. Life in society is inseparable from the influence of customs and culture in each region, including the tradition of marriage. However, not all marriages are carried out on a normal scale, there are some cultures in which marriages that are carried out must be forced, without the consent of either party. For example, in the Batak custom, boys are forced to marry *their bonbon*, or girls must marry *their namboru* children. Javanese custom, a child will be betrothed to his neighbor or friend since childhood, although when he grows up both may not agree to continue to the marriage level (Hasibuan, 2019).

Islamic law makes a rule related to the protection of a woman to carry out marriage through the *right of bar* to a guardian. The right to bar is seen as a form of protection and affection for parents for their daughters. At this time, the right to *ijbar* began to be disputed, because many young people wanted the freedom to choose a partner. When the young person is married to someone other than his or her spouse and the parents use the right of *ijbar*, then the practice is interpreted as coercion of the will leading to the term forced marriage. Apart from that, the right to *ijbar* owned by parents is considered a form of discrimination (Hakim, 2014).

Specifically, forced marriage in the eyes of the general public does not consider it a serious crime. This is based on the fact that a crime refers to an act or act that is considered detrimental to society or individuals, both materially and non-materially. Meanwhile, sociologically, crime is defined as an act that violates the norms or rules that apply in society (Leden, 2009). If you look at these two definitions, forced marriage can be considered a crime. Forced marriage is the basis for various violations that will occur, including domestic violence, which has violated the elements of criminal offenses and even moral norms that apply in society.

In general, the practice of coercion categorized as a criminal act must meet the following elements, namely: 1) The existence of an act committed; 2) Threats both physical and

mental; 3) The existence of the object or purpose of the action; 4) The desire of the coerced to be obeyed; 5) The presence of an element of freedom of action; 6) There are several forms of coercion related to mastery in carrying out forced actions (E.Y. Kanter; S.R. Sianturi, 2002).

Based on the description above, the government and the House of Representatives have agreed on UU nomor 12 tahun 2022 concerning the Crime of Sexual Violence, which includes forced marriage as a form of the Crime of Sexual Violence. The decision is based on the finding that the practice of forced marriage is contrary to applicable laws and regulations, as it has the potential to damage the future of individuals, especially women, and the stability of marriage itself.

In general, the implementation of law theory *is a tool of social engineering* that must be carried out so that the law can play a role as a means to change the social conditions of society. Changes in society are important in the context of sustainable development, which follows the times and technology. In addition, the law must be considered a harmonious and complete system. This legal system has harmonious characteristics because it aims to prevent conflicts. However, if the conflict still occurs for an undesirable reason, then the legal system has provided an instrument for its resolution (legal solution) (Luhman, 2009).

A theory that can be used in the study of forced marriage that is included in the criminal realm is the *dzari'ah* approach, which makes it possible to find out the motive or reason behind an event by examining the intermediaries that appear in that context so that it can be known whether the intermediary leads to good or bad. In its application, the rule of *dar'u al-mafasid muqaddamun ala jalbil mashalih* (rejecting damage takes precedence over benefiting) is still observed.

In the law of *taklifi* (burden), there is an explanation of something that precedes an action, which is called *muqaddimah*. This *muqaddimah* acts as an intermediary in the application of the law so that it includes the study of the concept of *dzari'ah* (Muaidi, 2016). Therefore, the scholars of ushul fiqh include *the mandatory muqaddimah* in the discussion of *dzari'ah*, because both are intermediaries used in doing something. The existence of this method makes a significant contribution. One of its distinctive features is the emphasis on discussing the media, namely how to punish an intermediary when it has the potential to cause damage (*mafsadah*), danger (*mudharrah*), or goodness (*maslahah*) (Munawaroh, 2018).

Through the use of *dzari'ah*, it will be examined whether the main motive behind the making of the law comes from forced marriage itself or concerns about domestic violence. In the approach of *dzari'ah*, there will be two possibilities, if it is aimed at good, then it is permissible or referred to as *fath dzari'ah*, but if it is aimed at evil, then it must be prevented or referred to as *sadz dzari'ah* (Muttaqin & Nur, 2019).

The importance of studying the criminalization of forced marriage in Law No. 12 of 2022 from the perspective of *Sad Dzari'ah* lies in the urgency to protect the human rights and dignity of individuals from detrimental practices. The perspective of *Sad Dzari'ah* provides a basis for preventing all actions that can result in harm to individuals, especially in terms of forced marriage which risks causing trauma, violence, and injustice in the

household. This approach strengthens the position of Law No. 12 of 2022 as a legal umbrella that not only prevents but also provides strict sanctions against the practice of forced marriage, in line with the purpose of the law to protect society from potential negative impacts and injustice. This study is expected to contribute to understanding how the criminalization of forced marriage can be an effective tool in achieving social justice and protecting individual rights in accordance with Sharia values and fundamental legal foundations.

RESEARCH METHOD

This type of research is normative legal research, which is part of the type of legal research that studies written law from various perspectives, such as theory, history, philosophy, comparison, structure and composition, scope and material, consistency, general explanation of article by article, formality, and binding force of law, as well as the legal language used. However, this study does not study aspects of the implementation or application of the law (Muhammad, 2004). Through the theory of *dzari'ah*, this study analyzes the motives or reasons behind forced marriage, whether it is related to domestic violence or solely because of coercion itself. Thus, this research is by the type of normative legal research based on this background. The approaches used are the statute *approach*; case approach; and conceptual approach.

The primary legal materials used are related to regulations related to coercion in marriage, namely: Law Number 1 of 1974 concerning Marriage; Government Regulation Number 9 of 1975 concerning the implementation of the Marriage Law; and Law Number 12 of 2022 concerning the Crime of Sexual Violence. Secondary materials consist of; Law books, legal journals that contain basic principles (legal principles), views of legal experts (doctrines), results of legal research, legal dictionaries, and legal encyclopedias.

In this study, a data analysis technique with deductive logic is used, which means processing legal materials deductively. This means that this study explains things that are general and draws more specific conclusions from it. The deduction method begins by presenting a *major premise* (general statement) as a foundation. Then, a *minor premise* (special statement) is proposed, and from both premises, a conclusion is drawn. However, in the context of legal arguments, legal syllogism is not as easy as traditional syllogism.

RESULT AND DISCUSSION

Forced Marriage

Regulations on marriage have existed since simple societies were maintained by community members indigenous leaders and/or religious leaders. Indonesia itself has had a marriage law since ancient times, the Srivijaya era, Majapahit, until the Dutch colonial period and until Indonesia became independent. The marriage rules no longer only concern Indonesian citizens, but also foreign citizens, because of the increasing social relations of the Indonesian nation (Hadikusuma, 2007).

Marriage is a very important institution in society. The existence of this institution is to legalize the legal relationship between a man and a woman. What is meant by marriage is an innate bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the one and only God (Article 1 of Law Number 1 of 1974) (Salim, 2008). Marriage law as part of civil law is legal regulations that regulate legal acts and consequences between two parties, namely a man and a woman to live together for a long time according to the regulations applied in the law. Most of the rules regarding the association of husband and wife are regulated by the norms of religion, decency, or decency (Tutik, 2008).

In KBBI, it is explained that coercion is a process, method, or coercive act, while etymologically coercion is doing something that is required even if you don't want to. Coercion in legal studies is defined as an invitation to take certain actions accompanied by threats. The context of coercion (*ikerah*) includes the power of the perpetrator of coercion to realize his desire to be carried out. On the other hand, the object of coercion (the victim) cannot refuse the action and there is a strong suspicion that the refusal will result in the threat being implemented. The threat in question can be in the form of dangerous actions, such as murder, beating, and others (Zayadi & Aisyah, 2022). Marriages based on coercion often end in divorce. Some studies show that the causative factor for divorce is forced marriage. This is because the purpose of marriage is to create a happy and lasting family, which will not be achieved under the conditions of forced marriage. This condition can negatively impact the mental health of husbands, wives, and even children who are victims (Muttaqin & Fadhilah, 2020).

Marriage is an innate bond of couples who want to form a family. The choice of marriage and with whom it is closely linked to self-determination has been recognized in several major international instruments as a fundamental human right (Dauvergne & Millbank, 2010). According to Komnas Perempuan, forced marriage is more targeted at women because of their subordinate position in society. The use of violence and/or coercion against a person to carry out marriage is an element of forced marriage. Forced marriage is also classified as gender-based violence. Komnas Perempuan said that violence against women is an act of violence against women that causes or tends to cause or cause physical, sexual, and psychological misery and suffering for both adult women and girls and adolescents (Nainggola et al., 2022).

Forced marriage should not be considered commonplace, as it has the potential to increase the frequency of sexual violence in the household. Forced sexual contact or marital rape are examples of sexual violence that can occur as a result of the practice of forced marriage. If both parties agree to the marriage, sexual interaction will likely be based on mutual liking. However, if there is a forced marriage, this is a dangerous behavior and can be subject to criminal penalties. In the event of forced marriage, women, especially as wives, become the main victims. In a society that adheres to a patriarchal system such as in Java, women are often the ones who are always blamed or made the target of accusations. The punitive social environment and the dynamics of blaming wives for domestic problems do not provide space for women to be seen as complex human beings

with diverse traits, who in addition to having weaknesses also have goodness (Mahfudin & Musyarrofah, 2019).

Patriarchal culture is still inseparable from women's lives so there is still a lot of unfair treatment happening to children and women in this country. Patriarchy itself comes from the word patriarchy which means the role of men as the sole ruler, center, and everything is the structure of the layout. The patriarchal culture that subjugated ordinary women started from the family. This treatment occurs at the family level and then extends to the public sphere. Men are endowed with privileges by a culture that makes them the center of power both at the family and public level, while women are only complementary (Yuwono, 2018).

Forced marriage is a social phenomenon that has existed for a long time and is a "commonplace" phenomenon in society. The practice of forced marriage has several types of motives. One of them is the forced marriage by an individual of the opposite sex. Usually, this happens when the perpetrator wants to marry his victim but the victim refuses to marry, so there is coercion. In mid-2020 in June, public attention was focused on the practice of "catch marriage" in the Sumba area, East Nusa Tenggara (A. A. I. A. A. Dewi & Wuri, 2020). There is footage showing a woman being forcibly taken to a place arranged by a man. The arrest process can be carried out anywhere, including in public places such as markets, streets, and even the victim's residence.

The factors that affect the occurrence of forced marriage are patriarchal culture and ideology that are socialized in society due to justification for various aspects of life. This aspect can be seen in terms of religious life, beliefs, and the state. Because, historically, many women have important positions in society and the country, but these women do not always get an appreciation for their roles and positions. Gender issues have indeed existed in humans since they first appeared on Earth. However, due to the limitations of the development of science and technology, at first gender issues were ignored and not questioned by the public. This is due to the growth of cultural values related to the role or division of labor, responsibilities, and standards of male and female images which are then considered as something natural (M. B. K. Dewi & Arifin, 2019).

Several practices of forced marriage, one of which occurred in Madura, because the tradition of forced marriage occurs inseparable from the habit of the people of Madura in marrying their children at a young age (early marriage), it is because often the practice of forced marriage of brides has an age range that is quite far from the age of men. But there are also two brides and grooms who have not reached the age of marriage set by the government. Marriage is carried out under the minimum *age of marriage* set by a country (Adhim, 2002).

Apart from Madura, forced marriage also occurs in other areas, one of which is in Sumba with the term captive marriage. Kawin tangkap (*pit rambang*) is a marriage tradition that is still carried out today by the people of the Sumba tribe of East Nusa Tenggara. In the old tradition of Sumba, the tradition of capture marriage cannot necessarily be done. The tradition of captive marriage is usually carried out by wealthy families because it is related to the dowry that must be paid to the expensive woman (Doko et al., 2021).

In addition to the two traditions above, there is also the tradition of kidnapping marriage, which is a marriage process that has been carried out for generations by the Sasak tribal community, where when a man wants to marry a girl, the man must first kidnap the girl from his family. This tradition has become an unwritten customary law on the island of Lombok. This kidnapping (*merariq*) of the Sasak tribe has become a local wisdom involving the belief of the Sasak tribe that the tradition is a symbol of a man's courage toward his future wife. Some of the reasons why the Sasak tribe carries out this tradition is because it has become an existing custom and they need to cultivate it. The next reason is because there is a conflict or different understanding of the parents with the relationship they are living (Setiana et al., 2023).

The fact in the community is that the right to Ijbar is often not fully understood regarding the meaning of ijbar. In simple terms, the right of ijbar is the right of parents to force their children to marry with the choice of their parents, which is often referred to as "forced marriage". However, it should be understood that the meaning of ijbar rights does not mean in the direction of the practice of forced marriage, because it leads to coercion and *ikrah* (Robbi Izzati, 2011). From the perspective of Shari'a, *ikrah* refers to the act of bringing a person in a direction that is not liked by one party (Mahmudin, 2020).

The meaning of *ikrah* connotation is the practice of a person being forced to do a certain job with a threat that endangers his soul and body and cannot resist the coercion. For the person who is forced, the action is against his conscience. It is clear that *ikrah* is a violation of human rights, and acts committed under *ikrah* can be declared null and void according to the law (Muhamad, 2001).

The construction of wali in fiqh consists of *wali mujbir* and *wali adhal*. The meaning of wali mujbir is a guardian who has full rights to carry out the marriage of his virgin daughter without asking for consent (Zuhaili, 2011). Meanwhile, a wali adhal is a wali who is not willing or reluctant to marry or become a guardian in the marriage of his daughter to a man who has become his child's choice (Zuhaili, 2011). If a woman has asked her guardian to marry a worthy or balanced man, and her guardian refuses without apparent reason, then the judge has the authority to marry her after ascertaining that the two are indeed worthy, and after advising the guardian to change her position (Rasjid, 2004). Although there are differences of opinion between Islamic schools, in general, the concept of wali mujbir is considered part of the guardianship in a marriage that must be fulfilled. However, the views of Islamic schools on this concept can vary depending on the viewpoint and interpretation used (Mahsun, 2014).

Criminalization of Forced Marriage

Forced marriage, which involves the decision to marry someone without their consent, is a common and complicated issue in Indonesian law. In this analysis, it will first discuss how the interaction between Indonesian customary law and the phenomenon of forced marriage and how customary law can be used to overcome this problem. One of the patriarchal cultures that is still thriving among Indonesian people is the culture in marriage, especially in the coercion that occurs in girls. The construction of coercion for women to carry out marriage is very common under the pretext of parental obedience above all else.

Culture is the support for this structure of life so that it gets legality to continue its implementation. In Weber's theory, the patriarchal ideal type assumes that dominance over women is considered a natural phenomenon. Family members accept dominance as an undoubted truth. They do not challenge the traditions and beliefs that support patriarchal practices, nor accept their subordinate lives (Munfarida, 2009).

In fiqh, forced marriage is always correlated with the *ijbar* right of a guardian. The word *ijbar* comes from the word *ajbara-yujbiru-ijbaaran*, this word has a meaning that is synonymous with *akeraba* and *alzama*, meaning coercion or forcing and forcing it (Warson, 1997). Thus, the right of *ijbar* owned by parents means the right of parents to marry their daughter without asking for consent from the child. Thus, forced marriage is a process between a man and a woman to form a family as husband and wife with coercion from parents without paying attention to the permission of the woman who will undergo the marriage (Asmawi, 2004).

The concept of *Ijbar* Rights, which gives guardians the authority to force girls to marry without their consent, faces a variety of complex contradictions in the context of forced marriage. The correlation between forced marriage and the right of *ijbar wali* shows that the practice of forced marriage in the community is also greatly influenced by the right of *ijbar wali*. This right gives the guardian the power to marry a daughter without her consent. Some studies consider this right to be natural, as it is considered advantageous for married girls. Another point of view states that the right of *ijbar wali* violates human rights and religious values. The use of this right can cause trauma and stress to victims who are forced to marry. Therefore, it is important to pay attention to and protect human rights and religious values in the practice of marriage.

An effective solution to address forced marriage in the context of customary law involves several steps. *First*, the government needs to increase public awareness about the importance of consent in marriage. *Second*, customary law must be updated to ensure that the marriage decision is made with the consent of all parties involved. *Third*, tighten sanctions against perpetrators of forced marriage, so that this action cannot be repeated.

In looking at *dzari'ah*, there are two aspects conveyed by the ushul scholars: a person's motivation in carrying out an action and the impact or consequences caused by the action. From this explanation, it can be concluded that there are two *dzari'ahs*, the *dzari'ah* that leads to a good is called *fath dzari'ah*, while the *dzari'ah* that leads to an evil is called *Shad dzari'ah*. According to Imam Ghazali, a good *dzari'ah* must open its door wide, and a bad *dzari'ah* must close its door tightly. The legal provisions of *dzari'ah* follow the legal provisions of its purpose. If the goal is *mubah*, then the intermediary is also *mubah*. If the goal is *haram*, then the law of intermediaries is also *haram*. If the purpose is mandatory, then the law of intermediaries is also mandatory. If the goal is *sunnah*, then the intermediary law is also *sunnah*. If the goal is *makruh*, then the intermediary law is also *makruh*.

Through this *dzari'ah*, it is possible to analyze the approach used in the criminalization of forced marriage, especially since marriage is a civil case that has no criminal element at all. That the criminalization of forced marriage is by the element of *dzari'ah*, namely the

existence of a certain motivation from the perpetrator of coercion to make the victim forced to carry out marriage on the one hand, and on the other hand the consequences arising from the marriage on which one of the spouses is forced to carry out the marriage. Broadly speaking, marriage, which incidentally has a civil aspect, can be brought to the criminal realm through *this dzari'ah* approach, namely consideration of motivation and consequences of what is done.

In the aspect of *maqasid* (goal/target), forced marriage is contrary to the nature of marriage and has the potential to have negative impacts on victims. The purpose of forced marriage can be to force a person to marry with an intention that is not by the nature of the marriage, such as forcing a child to marry without their consent or forcing someone to marry for economic reasons or social status. Forced marriage is one of the *wasilah* (intermediaries) against the occurrence of sexual violence in the household. Data from the Supreme Court's Decision during 2018-2022 shows that there were 213 cases of problematic marriages due to forced marriage, with 199 cases ending in divorce in the Religious Court. The National Commission on Anti-Violence against Women (Komnas Perempuan) recorded a 300 percent increase in forced marriage cases in line with the increase in child marriage cases (Karim et al., 2023).

There are several kinds of relationships between *dzari'ah* and its purpose. *First*, if the *dzari'ah* (intermediary) and its purpose are both permissible in the Shari'ah, this is the first model agreed upon by the scholars and can even become mandatory. *Second*, if *Dzari'ah* is not allowed in the Shari'ah but its purpose is also forbidden or prohibited. In this second category, the scholars agreed to prohibit it. *Third*, if *dzari'ah* is allowed in the sharia but the purpose is forbidden. This third category is a characteristic of *sadz dzari'ah*. *Fourth*, if *dzari'ah* is forbidden in the Shari'ah but its purpose is permissible. In matters that are forbidden because of *sadz dzari'ah*, some scholars allow them to be reopened because of greater benefits (*maslahah rajih*). It is also included in the category of *fath dzari'ah* (Luthfi, 2017). In the description related to the correlation between *dzari'ah* and purpose, the practice of forced marriage is included in the third category, namely, intermediaries are allowed but the purpose is forbidden. Although coercion is legal in fiqh or custom, it is feared that various family problems will arise along the way to the occurrence of domestic violence.

In practical terms, the application of *dzari'ah* in Penal Crime is as follows:

1. The *dzari'ah* approach in criminalization emphasizes prevention. By identifying and punishing acts that could lead to crimes, the law can prevent more serious crimes from occurring in the future.
2. *Dzari'ah* in criminalization also takes into account the social and cultural context of the community. Prohibited actions and sanctions imposed are adjusted to the circumstances and values that apply in society. This aims to make the law more effective and accepted by the community.
3. The *dzari'ah* approach always considers the balance between *maslahah* (benefits) and *mafsadah* (damage). Criminalization with this approach ensures that the prohibition or punishment imposed brings greater benefits to society and prevents greater damage.

4. The dzari'ah approach is proactive and preventive, not only reactive after a crime has occurred, by prohibiting actions that have the potential to lead to crime.
5. The dzari'ah approach helps to strengthen the social norms and values that exist in society, by preventing acts that lead to evil.

The effectiveness of the *dzari'ah* approach is highly dependent on public acceptance. If the public does not understand or accept the logic behind the ban, the application of the law can face resistance. The *dzari'ah* approach in criminalization offers a proactive and preventive method of preventing crime. By considering the benefits and mafsadah, this approach seeks to protect the community from actions that can lead to crimes. Despite its challenges, such as the determination of appropriate boundaries and the potential for abuse, if applied wisely and fairly, the *dzari'ah* approach can be an effective instrument in a criminal system oriented towards prevention and community welfare.

The dzari'ah approach in the context of marriage can be a very effective means of prevention by prohibiting actions that can lead to serious violations in marriage, *the dzari'ah* approach provides effective prevention of damage in the institution of marriage. Through the *shari'ah* approach in the context of marriage, it can be ensured that the law can protect the family from actions that can damage harmony and welfare, This helps to create a safe and healthy family environment. It can be one of the ways to enforce human rights in the family sphere: This approach supports the enforcement of human rights in the context of marriage by prohibiting acts that violate the rights of the couple.

Von Savigny argued that laws cannot be imposed from outside or created suddenly through *decrees*, but must develop from the customs, traditions, and values that exist in society. The true law is the one that reflects the *Volksgeist* or the soul of the nation, which contains the customs, beliefs, and way of life of the people concerned. Existing laws are not formed by arbitrary actions of lawmakers. Rather, it is the collective spirit of people who live and work together that gives birth to law. Laws are found and applied in the general consciousness of a society, and hence they are called people's laws. Thus, law develops through internal forces that operate in secret, not by the arbitrary will of the lawmakers (Aulia, 2020).

Focusing on the aspect of criminal law, crime in Indonesia must use the principle of legality with the principle of *nullum delictum nulla poena sine praevia lege poenali*, this principle is interpreted that there is no criminal act or delinquency without any regulations that have been regulated in advance (Sugiarto, 2017). Perpetrators of forced marriage offenses can be punished with imprisonment and fines. This shows how the implementing norm expresses *Grundnorm's values* through concrete legal sanctions. In addition, the TPKS Law also provides a protection mechanism for victims of forced marriage, including support and rehabilitation services, which is in line with the mandate of the 1945 Constitution to protect citizens.

The context of the criminalization of forced marriage in the Indonesian legal structure is based on the basic principles set forth by the 1945 Constitution. The TPKS Law, as part of the legal hierarchy that derives legitimacy from *the Grundnorm*, aims to protect human

rights and uphold justice. By criminalizing forced marriage and providing protection for victims, the TPKS Law translates the basic principles of *the Grundnorm* into concrete and enforceable legal rules. This ensures that Indonesia's legal structure works consistently with the underlying basic norms, reinforcing a fair legal system and oriented towards the protection of human rights.

Unlawful acts in civil contexts are often referred to as *onrechtmatige daad* while in criminal law the term *wederrechtelijk* is often used. An act is said to be unlawful in criminal law if it threatens and harms the public or public interest, while unlawful in civil law if the act harms the interests of individuals (*private*) (Rosa, 2003). Forced marriage is an unlawful act. Forced marriage not only violates applicable laws and regulations, but also violates the basic rights of individuals to be free from violence, exploitation, and discrimination. Therefore, the state needs to implement the TPKS Law above and its derivative rules that are effective in preventing and punishing the practice of forced marriage, as well as protecting the rights of victims.

Article 4 paragraph (1) of the TPKS Law positions forced marriage as a criminal act of sexual violence in the 5th position. Grammatical interpretation shows that the TPKS Law emphasizes that this act involves elements of violence, whether physical, psychological, or threats, which deprive a person of the right to choose a partner or marital status. Placing forced marriage in the 5th position in Article 4 paragraph (1) emphasizes the need for legal protection and preventive measures to protect the individual's right to free choice in marriage. Forced marriage is categorized as a criminal act because it is considered to violate human rights, especially the right to determine a life partner freely and without coercion. This interpretation broadens the understanding that marriage must be based on the full consent of both parties. Article 10 paragraph (1) of the TPKS Law explains that forced marriage must fulfill the elements of an unlawful act, namely the act of forcing someone to marry, either with or without the person's consent, with the threat of physical, psychological, or social violence. Forced marriage does not only include direct acts of physical violence, but also psychological, social pressure, or intimidation from family, the environment, or authorities. The perpetrator uses violence or power, either directly or through others, to place the victim in a situation that is completely under his control. Forced marriage can occur either in the form of a forced marriage between the perpetrator and the victim or between the victim and a third party. Article 10 paragraph (2) includes 3 (three) types of forced marriage, namely: a. Child marriage; b. forced marriage in the name of cultural practices; or c. forced marriage of the victim with the perpetrator of rape.

The considerations for determining the law using *Sad Dzari'ah* have two aspects: namely *maqasid* (goal/target) and *wasail* (intermediary). In the aspect of *maqasid* (goal/target), forced marriage is clearly contrary to the nature of marriage and has the potential to have a negative impact on the victim, and forced marriage is one of the *wasilah* (intermediaries) for the emergence of sexual violence in the household. *Sad Dzari'ah* in the context of Islamic law, is a concept that refers to preventive measures against something that can lead to dangerous acts. Through the *Sad Dzari'ah* approach in the context of Marriage, it can be a very effective means of prevention by prohibiting actions that can lead to serious

violations in marriage. In addition, the *Sad Dzari'ah* approach in the context of marriage can ensure that the law can protect families from actions that can damage harmony and well-being.

Criminalization of forced marriage through the *Sad Dzari'ah* principle aims to prevent the negative impacts that can arise from this coercive practice. *Sad Dzari'ah* emphasizes the prevention of potentially harmful actions, and in this context, prohibits forced marriage because it risks causing harm to individuals, especially women and children. The application of the *Sad Dzari'ah* principle in national law shows a preventive approach that not only punishes after the harm has occurred but also protects society from the potential harm that arises from the practice of forced marriage.

CONCLUSION

Culture is the support for the lasting structure of forced marriage so that it gets legality to continue its implementation. The factors that affect the occurrence of forced marriage are patriarchal culture and ideology that are socialized in society. In fiqh, forced marriage is always correlated with the *ijbar* right of a guardian. The correlation between forced marriage and the right of *ijbar wali* shows that the practice of forced marriage in the community is also greatly influenced by the right of *ijbar wali*. In the context of Islamic law, the concept of *Ijbar Rights* has a significant impact on the survival of forced marriage. Through *this dzari'ah*, it is possible to analyze the approach used in the criminalization of forced marriage, especially since marriage is a civil case that has no criminal element at all. The policy of criminalizing forced marriage has been by the elements of *dzari'ah*, in practice there is a certain motivation from the perpetrator of coercion to make the victim forced to carry out marriage on the one hand, and on the other hand, the consequences arising from marriage in which one of the spouses is forced to carry out the marriage. Perpetrators of forced marriage offenses can be punished with imprisonment and fines. This shows how the implementing norm expresses *Grundnorm's values* through concrete legal sanctions. In addition, the TPKS Law also provides a protection mechanism for victims of forced marriage, including support and rehabilitation services, which is in line with the mandate of the 1945 Constitution to protect citizens.

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