



Problems of Forced Child Marriage: Living Law and Positive Law Perspectives

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Abstract. Law Number 12 of 2022 concerning Sexual Violence Crimes (UU TPKS) aims to prevent all forms of sexual violence, including those against children. One form of sexual violence against children regulated in Article 10 of UU TPKS is forced marriage of children under the guise of cultural practices. This provision creates issues in society when viewed through the lens of living law. The issues continue when the KUHP Nasional (KUHP Nasional) recognizes the principle of material legality and imposes additional penalties in the form of customary obligations. This study aims to explain the problems related to the regulation of forced marriage as a form of sexual violence against children from the perspective of living law and positive law. This research is a normative juridical study using statutory and conceptual approaches. The data used in this study are secondary data collected through a systematic literature study of primary, secondary, and tertiary legal materials, and then analyzed descriptively and qualitatively. The results of the study indicate that the problems with forced marriage as a form of sexual violence against children arise due to differing understandings of "cultural practices" when used as a basis for forced marriage. Cultural practices have a very broad understanding, and one of them includes reactions or customary sanctions encompassed in living law. These reactions or sanctions can include forced marriage, especially in cases of immoral acts or adultery, but positive law does not provide a clear explanation of "cultural practices" as intended as a form of sexual violence against children. Therefore, the regulation of such matters cannot always be considered as sexual violence against children, because forced marriage of children under the guise of cultural practices as a reaction or customary sanction is essentially a form of protecting children from immoral acts or adultery.

Keywords: Forced Marriage, Child Sexual Violence, Living Law, Positive Law

1. Introduction

Sexual violence is currently a very worrying and disturbing phenomenon in the lives of Indonesian society. The forms of sexual violence are generally very diverse, as are the perpetrators and victims of these acts. Children in this case are vulnerable to becoming victims of sexual violence. The impact of sexual violence does not only have an impact on the physical, but will have a greater impact on the psychological, especially when the victim is a child. The trauma experienced by the victim, especially children, will be a very deep and prolonged wound, so it is the government's obligation to prevent and overcome sexual violence against children[1]. The Indonesian government through Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS) has made efforts to prevent and overcome this. Article 10 paragraph (2) of the TPKS Law is one of the provisions that regulates sexual violence against children. Based on this article, the form of sexual violence in question is forced marriage on children, either carried out in the name of cultural practices or when they are victims of rape. This provision aims to protect the welfare of children and fulfill children's rights, such as education, reproductive health and so on[2]. This objective is an important point in preventing criminal acts of sexual violence against children, but in law enforcement it cannot be separated from harmonization with other legal provisions.

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Law enforcement of Article 10 paragraph (2) of the TPKS Law on forced marriage can cause problems, especially regarding forced marriage in the name of cultural practices. These problems arise because some regions understand forced marriage as a form of sanction or customary reaction based on the perspective of living law. These sanctions or customary reactions are usually given to perpetrators of immoral acts or adultery and are not only given to adults, but their application to children also often occurs. This is caused by uncontrolled technological developments and free association that occurs in the environment of today's children, so that they can lead them into cases of immorality or adultery. The existence of forced marriage on children involved in immoral acts or adultery is based on positive legal provisions that are not strong and are considered not in accordance with the values and justice that exist in society[3]. This situation then gave rise to dynamics in Indonesian positive criminal law and what is currently happening through Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code) provides more complex problems. The National Criminal Code has expanded the principle of legality and one of its implementations is through additional criminal forms in the form of fulfilling customary obligations (Article 66 paragraph (1) letter f of the National Criminal Code). This change provides strength to the existence of the application of customary sanctions or reactions in accordance with the provisions contained in living law and one form is "forced of marriage".

Based on the explanation that has been presented previously, the problems in regulating forced marriage on children as a crime of sexual violence need to be considered for study. These problems can be realized because the perspective of positive law and the perspective of living law have different understandings of forced marriage on children in the name of cultural practices. The perspective of positive law in this case is based on the TPKS Law and the National Criminal Code which are the basis for regulating criminal acts of sexual violence in Indonesia. The perspective of living law is essentially based on the values and justice of society that grow and develop together with society itself. This study attempts to conduct a study of the problems of forced marriage as a crime of sexual violence against children using the perspective of positive law and the perspective of living law. The purpose of this study is to provide harmonization in regulating forced marriage on children in the name of cultural practices, so that it can realize the prevention and protection of children from criminal acts of sexual violence effectively without causing problems.

2. Literature Review

This section will provide an overview of previous research that has a similar topic, so that it can show the novelty of this research. Research studies on the problems of forced marriage as a criminal act of sexual violence against children have been carried out quite a lot, but these studies are still limited to the perspective of positive law, human rights and religious law. Research that has been conducted by Fadli (2018)[4]; Ismail and A. Malthuf (2022)[5]; Juvani, Debby and Rudolf (2023)[2]; and Ahmad (2023)[6] most of them conclude that forced marriage against children is a criminal act and can be categorized as a crime of sexual violence against children. Based on this conclusion, any act of forced marriage for any reason, including in the name of cultural practices, is a violation of positive law (criminal law) and human rights, so that the perpetrators involved deserve to be punished. Other previous studies with studies that focus more on forced marriage based on cultural practices or customary law such as those conducted by Ahmad Miftakhul (2022)[7]; Abdul, Rahmad, *et.al* (2023)[8]; Herman, Oheo, *et.al* (2023)[9]; Grendhard and Mardian (2024)[10]; and Nabila (2024)[11] in principle provide the same conclusion as research that examines it based on the perspective of positive law or human rights, but these studies have slight differences. These studies provide differences by concluding that there are changes in forced marriage in the name of cultural practices or customary law. The changes in question include the values adopted, the objectives and procedures in carrying out the process, so that forced marriage is rejected and considered unlawful. Based on previous studies when examined specifically, there are still shortcomings in the study of forced marriage as a criminal act of sexual violence

against children. This deficiency is the understanding of "cultural practices" which are used as one form of forced marriage as a criminal act of sexual violence against children. This study has novelty through efforts to provide an overview of the problems in regulating forced marriage as a criminal act of sexual violence against children, especially in the name of cultural practices. These problems will be studied based on the perspective of positive law and the perspective of living law, so that they can provide a comprehensive explanation of "cultural practices" and will provide harmonization in the regulation of forced marriage as a criminal act of sexual violence against children.

3. Methodology

Legal research is basically normative research[12], but the techniques and perspectives used are very diverse. This study uses a juridical-normative approach which is used to examine the problems of forced marriage as a criminal act of sexual violence against children through the perspective of positive law and the perspective of living law. The data used in this study are secondary data and are collected by conducting a literature study of legal materials, both primary, secondary, and tertiary, systematically. This study uses qualitative data analysis, namely the data that has been collected will be explained and described using sentences that are arranged logically[13]. This research will present the results of the analysis in a deductive manner, so that conclusions will be drawn starting from something general in nature, then described to provide answers to the problems contained in this research.

4. Discussion And Findings

The crime of sexual violence has generally been regulated in the UU TPKS as a provision of positive Indonesian criminal law. The law has determined the acts that are included as criminal acts of sexual violence and are regulated in Article 4 clearly and firmly. One form of such act is forced marriage as stated in Article 4 paragraph (1) letter e and then further regulated in Article 10. The position of the UU TPKS in Indonesian criminal law is a special provision or commonly referred to as *lex specialis*, so it is not surprising that in its application it will use the principle of *lex specialis derogat legi generalis*. This principle is one part of the principle of preference, namely the principle used to determine which legal provisions will take precedence when in a legal event there are several legal provisions that regulate it[14]. *Lex specialis derogat legi generalis* often interpreted as a special legal provision that overrides or defeats general law[15], In regulating criminal acts of sexual violence, the general legal provisions referred to are the Criminal Code.

UU TPKS as *lex specialis* in regulating sexual violence crimes basically cannot immediately apply the principle of *lex specialis derogat legi generalis* to override other legal provisions, especially regarding forced marriage of children in the name of cultural practices. This provision is because in criminal law to understand this principle there are 2 (two) views that must be considered, namely the view based on the container theory and the content theory. The container theory explains that *lex specialis* is everything that is regulated in provisions that are specific in nature, while the content theory is more directed at the content or contents of criminal law provisions that are more appropriate to be applied to a criminal act.[16]. Thus, law enforcement against criminal acts of sexual violence against children, especially forced marriage in the name of cultural practices, can cause problems, so it is necessary to pay attention to other legal provisions, including provisions in the KUHP Nasional and living laws.

Forced Child Marriage In Indonesian Criminal Law

Forced marriage of children is one of the phenomena that cannot be avoided in the life of society. The factors that cause this phenomenon are quite numerous, including low education, low economy or debt problems, and traditions or cultures that have become living laws[7][6][17]. Each factor in principle has its own form, *firstly*, low education factor can be

in the form of inappropriate parenting patterns towards children, such as having the view that the happiness of parents is the happiness of children. Another form of inappropriate parenting is giving freedom to children without supervision. The impact of this form can lead to free association carried out by children and parents only forcing their will without considering the needs or desires of their children on the grounds of maintaining family honor. *Secondly*, economic factors are quite dominant factors as causes of forced marriages on children. Low economy or debt problems will encourage parents to match their children according to their choices to solve these economic problems. *Thirdly*, tradition or cultural factors are also factors that still often occur in people's lives to force marriages on children. Tradition or culture when it has become a living law is carried out not only as a ritual or traditional ceremony, but the meaning contained in the process is related to the values and morals that grow and develop with society. This statement is the background for certain communities to practice forced marriages on children based on implementing living laws. The various forms that have been explained about the factors that cause forced marriages on children when faced with positive law and human rights will cause debate and rejection. This act can also be used as a criminal act of sexual violence against children as regulated in the UU TPKS.

Article 10 of the UU TPKS explains that anyone who forces a marriage is subject to a maximum prison sentence of 9 (nine) years and/or a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah). Forced marriage as referred to in this article is an unlawful act of forcing, placing someone under his or her power or another person's power, or abusing his or her power to carry out or allow a marriage to be carried out with him or another person. Article 10 paragraph (2) of the UU TPKS then provides provisions for the forms of forced marriage, namely:

1. Child marriage
2. Forced marriage in the name of cultural practices
3. Forced marriage of the victim to the perpetrator of rape

Based on these provisions, forced marriage of children for any reason is not justified even in the name of cultural practices that are still widespread in society. This provision is in line with the spirit of child protection as regulated in Law Number 23 of 2002 concerning Child Protection and its amendments. Child protection as referred to in this law is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and honor, and receive protection from violence and discrimination. This explanation, if associated with forced marriage of children, can be said to be discrimination in fulfilling children's rights, especially to grow and develop in accordance with human dignity and honor[18].

Protection of children based on the Child Protection Law is the responsibility of the state, government, society, family and parents. Article 26 of the Child Protection Law specifically regulates the obligations and responsibilities of the family and parents. One of the obligations and responsibilities that must be carried out by parents is regulated in paragraph (1) number 3, namely preventing marriage at a young age. This provision confirms that the Indonesian state consistently prevents early marriage, especially when there is coercion to enter such marriage. The reason for preventing forced marriage at an early age, apart from providing protection for children, is because of the negative impacts that will arise when marriage is carried out at an age when they are not yet adults and psychological and financial conditions are not ready. The negative impact that can occur is the failure to realize the purpose of marriage itself, namely creating a family that is *sakinah, mawaddah wa rahmah*[19]. These negative impacts and efforts to protect children are what then become the basis for providing criminal threats for anyone who forces a child into marriage for any reason as regulated in the UU TPKS.

Prevention and protection of children from forced marriages have been expressly regulated in Article 10 of the UU TPKS. The previous explanation has described forced marriage as a criminal act of sexual violence against children, so that in this case the matter

of marriage which is part of private law becomes part of public law. The main characteristic of public law is to regulate public interests, so that in its implementation it is the authority of the state through its tools to enforce the law[20]. The public law referred to in this provision is criminal law and it has become a common understanding that criminal law has a special nature, namely *ultimum remedium*. This nature makes criminal law the last weapon in enforcing the law, so that the use of criminal threats is the last option and must prioritize other legal provisions when legal problems occur.[21]. The statement explains that there are 2 (two) important things regarding the regulation of forced marriage as a criminal act of sexual violence against children, namely *first*, the regulation carried out in legal provisions other than criminal law does not yet have maximum power so that it needs to be regulated in criminal law. *Second*, the act of forced marriage against children is an act that threatens the welfare of society, especially children and has a strong negative impact so that it needs to be regulated in criminal law provisions as a criminal act of sexual violence against children.

The acts regulated in criminal law are very identical to the elements that must be fulfilled according to the formulation of the articles that regulate them. The forced marriage that has been regulated in Article 10 of the UU TPKS, when observed carefully, there is an element that causes problems, namely the element of "forcing". The problem that arises is understanding the difference between the words "forcing" and "forced". The two words are literally easy to distinguish, but in practice it is very difficult because they have a very strong overlap. This statement is based on the provisions of marriage dispensation regulated in Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications. The regulation defines marriage dispensation as the granting of marriage permission by the court to prospective brides and grooms who are not yet 19 years old to get married. Clearer provisions regarding marriage dispensation are regulated in Article 7 paragraph (2) of the Marriage Law which essentially explains that marriage dispensation is the right of parents to apply for dispensation and can be granted when there are very urgent reasons accompanied by sufficient supporting evidence. Very urgent reasons are basically situations when there is no other choice and a marriage must be carried out. Parents have legal standing to apply for marriage dispensation regardless of the very urgent reasons, but this provision can cause confusion regarding the interpretation of the words "forced" and "forced" in practice. This statement is based on the application for marriage dispensation, sometimes there is a conflict of interest between the interests of the child and the interests of the parents to carry out a marriage, especially with certain incentives such as low economic conditions, lack of education and laws that exist in society[22].

Positive Legal And Living Law Perspectives On Forced Child Marriage

The Indonesian criminal law system is in principle very identical to positive law, but on the other hand, living law also has an existence. The position of positive law and living law in Indonesian criminal law actually have the same position and complement each other[3]. Emergency Law Number 1 of 1951 is one of the bases for recognizing living law in the provisions of Indonesian criminal law. Article 5 paragraph (3) letter b of the law provides space for living law to be the basis for determining whether an act can be punished when it is not regulated and has no equivalent in the law (KUHP). Developments in Indonesian criminal law through the KUHP Nasional have provided clear and firm space for living law. Article 2 of the KUHP Nasional regulates the principle of material legality which in essence explains that to enforce criminal law provisions can be based on living law[23]. The general provisions contained in the KUHP Nasional, including the principle of legality, are basically the main source in the implementation of Indonesian criminal law, this is due to the codification and unification nature adopted[24]. Thus, the UU TPKS, although it is a *lex specialis* in the regulation and enforcement of the law against forced marriage as a criminal act of sexual violence against children, cannot immediately deviate from the general provisions contained in the KUHP Nasional. The provisions contained in the UU TPKS in its development have encountered obstacles and challenges, especially regarding the

regulation of forced marriage against children in the name of cultural practices. This situation occurs because of the differences in perspectives contained in positive law and living law when understanding forced marriage in the name of cultural practices.

Cultural practices, in principle, have a very broad meaning. Culture can be defined as the entire complex way of life within a society, encompassing knowledge, beliefs, arts, morals, customary law, and all habits that develop and evolve within the community[25]. This definition reflects the spirit of a nation, as articulated by von Savigny in his statement that law follows the *volkgeist* of each society [26]. This doctrine later evolved with the theory of living law proposed by Eugen Ehrlich. This theory explains that law should be viewed as a living certainty based on reality or the values that grow and develop within the society[27]. Cultural practices cannot be detached from living law, as culture forms the foundation of living law. Therefore, the perspective of living law is crucial in understanding regulations on forced marriage under the guise of cultural practices as a sexual violence crime against children.

The perspective of living law within the Indonesian legal system is often associated with customary law provisions. The term "customary law" was popularized by van Vollenhoven through his research on norms practiced in Indonesian society[26]. His findings reveal that Indonesian society has developed its own legal system that evolves with the community. Snouck Hurgronje further added that customary law operates without the separation found in Western law between private and public affairs[28]. Customary law is applied with a spirit of familialism, where individuals are subject to and serve the dominance of societal rules, indicating that community interests take precedence over individual interests[29]. The prevailing theory suggests that living law does not separate private law from public law; however, in practice, provisions related to criminal offenses, penalties, and sentencing are also known within living law under different terms. Some scholars have attempted to consolidate these into a separate legal framework, which is then referred to as customary criminal law. A distinctive feature of this framework is that its primary sources are derived from the living values within the community, meaning that the determination of types of criminal offenses, penalties, and sentencing will always follow the evolving values in society while remaining consistent with its underlying philosophy.

Provisions within living law continually evolve with changes in time, demonstrating the dynamic nature of living law. The magical-religious aspect is also deeply embedded in living law, relating to the philosophical beliefs held by the community in implementing its provisions. These characteristics are not considered taboo, as society constantly evolves, with Indonesian society in particular upholding divine values highly. Customary law, as a manifestation of living law, is generally dominated by customary practices and has connections with the religious laws followed by the community, thus implementing legal realities in accordance with its societal personality[30]. Society acknowledges that living law regulates not only human relationships but also the cosmic realm (the real and the supernatural)[31]. Hilman Hadikusumo explains that discussing customary criminal law involves seeking provisions regarding actions and sanctions that apply in community life based on living law. These actions and sanctions generally relate to violations that disturb societal balance and the methods for addressing such issues[32].

Hilman Hadikusumo's explanation provides insight into criminal acts, penalties, and sentencing within living law. In the context of living law, a criminal act can be understood as an action that is prohibited because it disrupts societal balance. This balance is fundamentally related to the security and comfort of the cosmic realm, encompassing not only interpersonal relationships within the community but also the relationship between humans and the universe, as well as between humans and the divine. For instance, customary law in Bali adheres to the philosophy of *Tri Hita Karana* which consists of three elements[33]:

1. *Parahyangan* is the harmonious relationship between *Krama Desa Adat* and *Hyang Widhi Wasa* (God).

2. *Pawongan* is a harmonious social system between fellow humans.
3. *Palemahan* is a system of harmonious relationships between *Krama* and the surrounding natural environment.

This philosophy greatly influences the regulation of types of criminal acts based on living law, so that every prohibited act is an act that can cause disturbance to one or all of the three elements. This provision also applies when determining the type of crime and punishment or in living legal terms is called a customary reaction, which in its application requires the restoration of the three elements.[28]. Based on this explanation, understanding the inherent characteristics of customary law regarding prohibited acts and the reactions that can be given is necessary. I Made Widnyana identifies five key characteristics, namely[34]:

1. Comprehensive and unifying, because it is imbued with an interconnected cosmic nature so that customary criminal law does not distinguish between criminal and civil offenses.
2. Open provisions, because it is based on the inability to predict what will happen so that it is not certain and its provisions are always open to all events or actions that may occur.
3. Differentiating problems, in the event of an offense that will be seen not only the act and its consequences, but what will be seen includes what is the background and who is the perpetrator, so that the resolution will be different.
4. Justice by request, that resolving customary violations is mostly based on requests or complaints, demands or lawsuits from parties who are harmed or treated unfairly. This provision does not apply when the act committed directly harms and disturbs the balance of society which cannot be resolved within the limits of kinship authority.
5. Reaction or correction measures may not only be imposed on the perpetrator but may also be imposed on his/her relatives or family and may even be imposed on the community concerned to restore the disturbed balance.

Based on these characteristics, the types of criminal acts and criminal penalties in living law are very broad and diverse. The impact given is that the difference between living law and positive law in determining the types of criminal acts and criminal penalties cannot be avoided. Significant differences can be seen in the regulation of forced marriage of children, especially in the name of cultural practices. The perspective of positive law clearly and firmly determines forced marriage of children for any reason as a criminal act of sexual violence, but the perspective of living law does not always make forced marriage of children a criminal act or prohibited act. The previous explanation has provided an illustration that cultural practices have a broad meaning and one of them is as the application of living law. Cultural practices when referred to as the application of living law will be related to the provision of customary reactions through stages of problem solving according to living law. Customary reactions in each region have various forms and characteristics, but the form of customary reaction in the form of "marriage" is regulated by almost all regions and cultures. This form of reaction or customary sanction is closely related to immoral acts or adultery, whether committed by adults or children. For instance, the customary reaction of "marriage" is present in the living laws of Bali, Batak Karo[28] and Pekal People [35]. These provisions are implemented by living law based on procedures for resolving cases based on 3 (three) principles, namely[36]:

1. The principle of harmony, with the aim of restoring the situation to its original state, which includes its status and honor, as well as the realization of harmonious relations among people. This principle does not determine winning or losing.
2. The principle of merit, aiming for the resolution of customary conflicts can maintain the good name of the parties, so that no one feels humiliated by their status and honor as members of the community.

3. The principle of equality serves to pay attention to the realities and feelings that live in the community, which have grown and developed into traditions for generations. The principle of equality is carried out by considering the place, time, and circumstances (*desa, kala, patra*), so that the decision can be fair and accepted by the parties and the community.

Society basically still maintains the existence of giving customary reactions in the form of "marriage" which in positive law is then interpreted as "forcing marriage in the name of cultural practices". The generalized meaning of "cultural practices" gives rise to criminalization of living legal provisions, besides that it also shows the absence of harmonization between living law and positive law in the application of criminal law in Indonesia. The KUHP Nasional has attempted to carry out this harmonization with the existence of additional criminal penalties in the form of fulfilling customary obligations (Article 66 paragraph (1) letter f). This provision will be very influential in providing changes to understand forms of forced marriage in the name of cultural practices as criminal acts of sexual violence against children. Cultural practices by forcing marriage on children based on the perspective of living law cannot be immediately used as criminal acts of sexual violence when the practice is a customary reaction to certain actions.

The living law has a different view on forced marriage as a criminal act of sexual violence against children. The previous explanation has provided an understanding of forced marriage in the living law as a form of reaction or special sanction against certain prohibited acts, namely immoral acts and adultery committed based on mutual consent or without coercion. This provision confirms that the application of customary reactions in the form of forced marriage cannot be given to all forms of immoral acts and the application of these customary reactions is only for perpetrators who do not have a legitimate marital relationship. This statement is in line with the basis for giving customary reactions must be fair, in the sense that the provision of these reactions can be felt to be fair by the convict and the victim and the community, so that the disturbances or conflicts that occur will disappear and social life can be restored to its original state[28]. Immoral acts in living law are considered as deviations from sexual activity such as adultery which can disrupt the balance of community life. [35]. An example of such an act is *lokika sanggraha*, which still has significance in the customary law of Bali. *Lokika sanggraha* involves a sexual relationship between a man and a woman without a lawful marriage, based on mutual consent and then causes the woman to become pregnant[37]. The main customary reaction to this act is that the male perpetrator must marry the woman who has been impregnated because of his actions and the willingness of both parties to have sexual intercourse, but there are also other sanctions when the main reaction cannot be carried out[26].

The forms of immoral acts that occur today, especially among children, are greatly influenced by the times that lead to freedom. Promiscuity is the main problem that occurs in the lives of children today. Society considers promiscuity as a "disease" for mankind, especially among children, which can be "contagious"[38]. The impact of these circumstances always leads to negative impacts and even to immoral acts such as free sex[39]. A very instrumental factor in this phenomenon is the role of parents to educate, pay attention to and supervise the movements of their children[40]. Parents who are negligent in performing this role and lack of education and understanding of cultural values can be a major factor in the occurrence of promiscuity in children. This situation will cause many parents to take shortcuts to prevent promiscuity in children by forcing marriage. The previous explanation of customary reactions in the form of forced marriage to children as a special form of punishment has a correlation with the conditions of rampant promiscuity. The affirmation regarding the provision of customary reactions is that they are only given to children who are perpetrators of certain immoral acts which can be caused by free association, so that in this context the provision of customary reactions in the form of "marriage" attempts to provide protection for children.

5. Conclusion

Problems that occur in regulating forced marriage as sexual violence against children are caused by differences in views between the perspectives of positive law and living law. The most important difference is the understanding of the meaning of “cultural practices” as a basis for coercing marriage against children. Article 10 of the UU TPKS has regulated the forced marriage of children for any reason, including based on cultural practices, as a form of sexual violence. This provision is contradicted from a living law perspective, because the UU TPKS does not provide a clear explanation of what is meant by “cultural practices” as a basis for forcing marriage against children. “Cultural practices” have a very broad meaning and one of them is the provision of customary reactions or sanctions that are summarized in living law. The form of the reaction or sanction can be in the form of forced marriage as a special form given to the perpetrators of immoral acts or adultery. Based on this understanding, according to the living law, the forced marriage of children in this context is not a crime of sexual violence, but an effort to protect the values that live in society.

The reforms contained in the KUHP Nasional can provide more complex problems in the regulation of forced marriage as sexual violence against children. Article 66 paragraph (1) letter f of the KUHP Nasional regulates the existence of additional punishment in the form of fulfillment of customary obligations. This provision provides a stronger existence for the provision of reactions or customary sanctions in the form of forced marriage contained in living law. The problem of regulating forced marriage in children as a form of sexual violence is very complex, because children are the next generation of the nation, so that all parties have a role and responsibility to protect this generation. Thus, this study emphasizes the importance of harmonization between positive law and living law to ensure effective protection of children from sexual violence, including forced marriage. This harmonization should include a more detailed and specific explanation of cultural practices in the context of forced marriage as well as an affirmation of the protection of children's rights in accordance with the values of justice that develop in society.

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