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A Critical Study of Child Marriage as a Sexual Violence Crime in the Perspective of Jasser Auda's Systems Theory

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Abstract:

Child marriage remains a persistent phenomenon in Indonesia due to cultural norms, economic pressures, and narrow religious interpretations. This practice, however, carries the risk of concealed sexual violence and violations of children's fundamental rights. This research aims to examine child marriage as a criminal act of sexual violence under Law Number 12 of 2022 concerning the Crime of Sexual Violence (UU TPKS), and to analyze it using Jasser Auda's System Theory. Employing a normative juridical research method, this study applies a statute approach to explore legal frameworks and a conceptual approach to assess theoretical perspectives. Primary legal materials consist of national laws and regulations, while secondary materials include academic literature, journals, and relevant scientific works. Data were analyzed qualitatively using a descriptive-analytical method to interpret legal stipulations and theoretical viewpoints. The results of the study reveal that the UU TPKS explicitly categorizes child marriage as a form of forced marriage, which constitutes a criminal act of sexual violence as stipulated in Article 10 paragraph (2). Any sexual relations within such marriages involving minors who lack mature consent capacity are deemed unlawful and a violation of human rights. Within Jasser Auda's System Theory, this legal position aligns with the purposefulness and holistic nature of Islamic law, which seeks to realize benefits and prevent harm, especially for vulnerable groups such as children. Therefore, child marriage contradicts the maqāṣid al-sharī'ah and must be prevented as a form of sexual violence by both the state and society.

Keywords: child marriage; sexual violence Act (UU TPKS); Jasser Auda's Systems Theory.

Introduction

Child marriage refers to a marriage in which one or both parties are still categorized as children or adolescents under the age of 19. This definition is based on Article 7 paragraph (1) of Law No. 16 of 2019, which stipulates that "marriage is permitted only if the man and woman have reached the age of 19 (nineteen) years." Where there is a deviation from the age requirement as provided under Article 7 paragraph (2) of Law No. 16 of 2019, the parents of either the prospective husband

or prospective wife may apply to the court for a marriage dispensation on the basis of compelling circumstances, accompanied by sufficient supporting evidence.[1]

UNICEF reported that, by the end of 2022, Indonesia had recorded nearly 15 million cases of early child marriage, placing the country second in ASEAN and eighth globally.[2] Child marriage frequently occurs due to cultural, economic, and religious factors, as well as social norms that regard marriage as a solution to premarital pregnancy or poverty. Child marriage is considered a violation of children's rights, including the right to life and the right to continue their education. It also places girls at greater risk of maternal mortality during childbirth compared with women who marry at a more mature age. Other negative consequences of early marriage for girls include various psychological problems, such as anxiety, depression, and even suicidal ideation. Another consequence concerns the limited knowledge of sexuality and sexually transmitted diseases, including HIV/AIDS,[3] as well as, more significantly, the potential occurrence of sexual violence that becomes legitimized through the institution of marriage.

In line with these concerns, Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS) emerged as a significant milestone in the protection of victims of sexual violence. Article 10 of Law No. 12 of 2022 stipulates that "any person who unlawfully forces, places a person under his or her control or the control of another person, or abuses his or her authority to enter into or permit a marriage with himself or herself or another person shall be subject to punishment for forced marriage." Furthermore, Article 10 paragraph (2) provides that "such forced marriage includes child marriage, forced marriage in the name of cultural practices, or the forced marriage of a victim to the perpetrator of rape." The enactment of the UU TPKS represents a significant development in protecting children in Indonesia who have historically experienced unfair treatment from their parents through being forced to marry at an inappropriate age. Criminal law concerning sexual violence crimes was enacted to develop and strengthen the criminal law framework for preventing various forms of crime emerging in society.[4] The law also expands the definition of sexual violence beyond physical acts to encompass power relations, age disparities, and the absence of valid consent. In this context, child marriage involving a person under the age of 18 who lacks sufficient capacity to provide mature consent may be regarded as a systematic form of sexual violence that is legitimized through marriage.

The prevention of and criminal sanctions for forced marriage are essential elements in protecting women and children. Discrimination against women and children, together with their vulnerable position, has prompted the enactment of

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[1] Dhorifah Hafidhotul Hikmah, "*Pengaruh Batas Usia Kawin Dalam Undangf-Undang Nomor 1 Tahun 1974 Terhadap Jumlah Perkawinan di Bawah Umur di Kabupaten Rembang Jawa Tengah*," Diponegoro Law Journal, no 2 (2017): 5 https://ejournal3.undip.ac.id/index.php/dlr/article/view/16973

[2] Isthi Qonita, "*Orang Tua Kerap Menjadu Pelaku Pemaksaan Perkawinan terhadap Anak Perempuan*", Infid, 20 September 2024, diakses 22 Juni 2025, https://infid.org/orang-tua-kerap-menjadi-pelaku-pemaksaan-perkawinan-terhadap-anak-perempuan/

[3] Fransiska Novita Eleanora dan Andang Sari, "*Perkawinan Anak Usia Dini Ditinjau Dari Prespektif Perlindungan Anak*", Progresif: Jurnal Hukum, No.1 (2020): 51 https://doi.org/10.33019/progresif.v14i1.1485

[4] Fauzati, Syahril Abbas, dan Muslim Zainuddin, "*Transformasi Hukum Keluarga: Menyikapi Pemaksaan Perkawinan Anak sebagai Tindak Pidana di Indonesia*", Jurnal Mediasas, No. 1 (2024): 41 http://journal.staisar.ac.id/index.php/mediasas/article/download/102/110/629

various laws and regulations aimed at providing legal protection.[5] Despite the negative perceptions surrounding child marriage and the existence of regulations that classify child marriage as a punishable form of sexual violence, several scholars argue that this characterization cannot be accepted without qualification. One of the underlying arguments concerns the legitimacy of religious teachings, particularly Islamic teachings, which do not prohibit marriage below the statutory minimum age as long as the parties intending to marry have reached bulugh (puberty).[6] Another argument is that child marriage cannot necessarily be considered sexual violence because minors are legally permitted to apply for a marriage dispensation.[7]

This study seeks to examine child marriage as a form of sexual violence from the perspective of the Law on Sexual Violence Crimes (UU TPKS). By employing Jasser Auda's Systems Theory, this study analyzes and critically examines the provisions of the UU TPKS. Jasser Auda's Systems Theory offers a hermeneutical approach grounded in maqashid al-shariah as the philosophical basis for its analytical framework. Unlike classical fiqh approaches, which tend to be normatively textual, Jasser Auda's Systems Theory emphasizes the principles of nonlinearity, multidimensionality, and purposefulness, placing values of justice, protection, and human rights at the foundation of legal interpretation. This approach enables a reassessment of social practices such as child marriage from a more objective-oriented (maqashid-based) perspective of Islamic law, rather than merely through the lens of formal legality. This study is expected to make both theoretical and practical contributions to the development of Islamic and national law grounded in justice.

Method

This study employs normative juridical research, with a particular emphasis on library research through an examination of primary legal materials, namely Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS), and secondary legal materials, including relevant literature, journal articles, and scholarly works. The approaches employed include a statutory approach to examine the legal provisions governing child marriage and a conceptual approach to examine legal views and doctrines, as well as the perspective of Jasser Auda's Systems Theory. Data were collected through documentary research involving various legal sources and academic references. All data were analyzed qualitatively using a descriptive-analytical method to interpret the relevant legal provisions and relate them to the theoretical framework employed in addressing the research questions.

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[5] Adillah Srikandi Karim, Nontje Rimbing, dan Yumi Simbala, "*Pemaksaan Perkawinan Dalam Perspektif Tindak Pidana Kekerasan Seksual Menurut Undang-Undang Nomor 12 Tahun 2022*", Lex Administratum, No. 1 (2023): 3, https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/53082

[6] Nur Anissa dkk., "*Usia Kawin Perempuan Dalam Paradigma Hukum Islam*," DOKTRINA: JOURNAL OF LAW 4, no. 1 (2021): 16–38, https://doi.org/10.31289/doktrina.v4i1.4253.

[7] M. Anwar Nawawi dkk., "*Harmonization of Islam and Human Rights: Judges' Legal Arguments in Rejecting Child Marriage Dispensation in Sukadana, Indonesia*," Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan 22, no. 1 (2022): 1, https://doi.org/10.18326/ijtihad.v22i1.117-134.

Results and Discussion

Legal Provisions on Child Marriage under Law No. 12 of 2022 on Sexual Violence Crimes

Forced marriage constitutes a form of sexual violence because forced sexual relations may become an inseparable part of a marriage that is unwanted by the woman. This includes child marriage. The criminal act of forced marriage may also be understood as an act in which a person abuses his or her authority through violence, threats of violence, deception, inducement, a series of lies, or other forms of psychological pressure, thereby preventing another person from giving genuine consent to enter into a marriage.[8] There are several circumstances in which women may be subjected to marriage against their will. First, women may feel that they have no choice but to comply with their parents' wishes to marry, including marriage to someone they do not know. This situation is commonly referred to as forced marriage. Second, certain practices require rape victims to marry the perpetrators, with marriage being perceived as a means of reducing the disgrace associated with rape. Third, there is the practice of cerai gantung (suspended divorce), in which women are forced to remain in a marital relationship despite their desire to divorce, while their divorce is rejected or left unprocessed for various reasons by their husbands or other authorities. Fourth, there is the practice known as "blind love marriage," in which a woman is compelled to marry another man for one night for the purpose of enabling reconciliation with her former husband after the latter has pronounced talak three times, following the third and final divorce under Islamic law. Although this practice is prohibited in Islam, it continues to occur in some regions. In its studies on culturally based violence against women, the National Commission on Violence Against Women (Komnas Perempuan) has also identified customary settlement mechanisms and spaces for negotiation between the parties in cases of forced marriage, although these mechanisms tend to be unfavorable to women.[9]

Marriage must be entered into on the basis of the agreement of both prospective spouses. This principle is explicitly provided in Article 6 paragraph (1) of Law No. 1 of 1974 on Marriage, which stipulates that a marriage must be consented to by both parties entering into the marriage without coercion from any party. This requirement reflects the purpose of marriage, namely, to enable the husband and wife to establish a permanent and happy family, and is also consistent with human rights principles. In principle, no person may be compelled, whether through threats or any other means, to marry another person. Marriage must be based on the free will and consent of each party.

Forced marriage constitutes one of the forms of sexual violence crimes. The criminal provisions applicable to perpetrators of forced marriage are set out in Article 10 of the UU TPKS. Article 10 paragraph (1) of the UU TPKS provides that any person who unlawfully forces, places a person under his or her own authority or that of another person, or abuses his or her authority to compel or allow a marriage to take place with himself or herself or another person shall be subject to criminal

[8] Muammar Wafiuddin, "Undang-Undang Tindak Pidana Kekerasan Seksual Tentang Pemaksaan Perkawinan Perspektif Feminist Legel Theory"Electronic Theses, Institut Agama Islam Negeri Ponorogo,(2022) http://repository.iainponorogo.ac.id

[9] Muammar Wafiuddin, "Undang-Undang Tindak Pidana Kekerasan Seksual Tentang Pemaksaan Perkawinan Perspektif Feminist Legel Theory", http://repository.iainponorogo.ac.id

liability for forced marriage. The provision stipulates a maximum imprisonment of nine years and/or a maximum fine of IDR 200 million. Article 10 paragraph (2) further specifies that forced marriage includes child marriage, forced marriage conducted in the name of cultural practices, and the forced marriage of a victim to the perpetrator of rape. Forced marriage is categorized as sexual violence as stipulated in Article 4 paragraph (1).

The criminal offense of forced child marriage is classified as a public offense (delik biasa), meaning that it may continue to be processed through the legal system even in the absence of a report or complaint from the victim. As provided in Article 4 paragraph (1) of Law No. 12 of 2022 on Sexual Violence Crimes, child marriage is categorized as a public offense because it constitutes one of the forms of sexual violence crimes. Forced child marriage occurs when a person abuses his or her authority through violence, threats of violence, deception, or other forms of psychological pressure to prevent a child from providing genuine and appropriate consent to marriage. Children who are forced into marriage are highly vulnerable to physical, psychological, sexual, and economic violence. They are placed in a position in which they must either resist or accept the forced marriage while potentially experiencing the same forms of violence as well as customary and social sanctions. This situation occurs without sufficient consideration of the multiple and layered forms of coercion and violence experienced by children throughout the process.[10]

The criminal offense of forced child marriage may be established when several elements are fulfilled. First, there must be a perpetrator who commits the act. This element is essential because, without a perpetrator, there can be no victim in a case of forced marriage. Second, there must be a child who becomes the victim of coercion. In other words, an act may be characterized as forced child marriage only where a child is actually compelled to marry. Under Law No. 12 of 2022 on Sexual Violence Crimes, a child is defined as a person under 18 years of age, including a child still in the womb. Third, there must be an element of abuse of authority. This means that it must be established that the perpetrator improperly exercised his or her authority to compel the child to marry. Fourth, there must be an element of violence, whether physical, psychological, sexual, or economic. Physical violence generally affects the victim's psychological condition because physical acts may cause psychological trauma, while sexual and economic violence may occur when the forced marital relationship continues within domestic life. Fifth, it must be established that the child was unable to provide consent freely and consciously. This element demonstrates that the child experienced pressure, was unable to express his or her views freely, and had his or her rights deprived by the perpetrator, resulting in a sense of powerlessness in relation to the circumstances experienced.[11]

Analysis of Child Marriage as a Criminal Offense under the Sexual Violence Crimes Law from the Perspective of Jasser Auda's Systems Theory

[10] JL Fiore Mongkaren, Debby T Antow, Rudolf S Mamengko, "Tindak Pidana Pemaksaan Perkawinan Menurut Undang – Undang Nomor 12 tahun 2022" Lex Crimen, Vol. 12, No. 3, 1 - 11
[11] Nilyan A. Samulu, Muammar, Dikson T. Yasin, "Pemaksaan Perkawinan Anak dalam Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual Tinjauan Jinayah," *Journal Of Islamic Criminal Law and Criminal Law*, No.1 (2024):89 https://ejournal.iaingorontalo.ac.id/index.php/jiccl/article/download/1493/1084/6213

In contemporary Islamic legal epistemology, which draws on Jasser Auda's systems philosophy, six features can be employed to examine and address questions concerning the role of Maqāṣid al-Sharī'ah in contemporary legal reasoning. Systems theory is commonly employed in both legal theory and practice as an approach to legal reform and the continued relevance of law. In this context, the analysis of child marriage as a criminal offense under the Sexual Violence Crimes Law from the perspective of Jasser Auda's Systems Theory can be represented through six features: the cognitive nature of systems, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness.[12]

First, the cognitive nature feature in Jasser Auda's Systems Theory emphasizes that Islamic law (fiqh) is the product of human ijtihād in understanding the naṣṣ (the Qur'an and Hadith). Fiqh is not a direct representation of divine commands; rather, it constitutes a form of human cognition or understanding that is ẓannī (based on probable interpretation) and therefore subject to varying degrees of certainty.[13] In the context of child marriage and its relationship to sexual violence crimes, it is necessary to examine the relevant sources of Islamic law and subsequently analyze them cognitively by considering their context, objectives, and consequences. Imam al-Qurṭubī, in his Qur'anic commentary, explains that rushd in Q.S. al-Nisā' [4]: 6 encompasses religious maturity as well as the ability to manage worldly affairs.[14] This indicates that Islam requires comprehensive maturity before marriage, rather than merely physical maturity. The Hadith concerning readiness for marriage, narrated by al-Bukhari and Muslim, no. 5066, emphasizes the requirement of al-bā'ah (capacity) before marriage. Muslim scholars differ regarding the meaning of al-bā'ah, including the financial capacity to pay the mahr and provide for a family, the physical capacity to engage in sexual relations, and the psychological maturity necessary to fulfill marital responsibilities. Imam al-Nawawi explains that al-bā'ah encompasses all of these dimensions of capacity.[15] Minors, particularly those who have not attained physical, psychological, and economic maturity, do not fulfill the requirements of al-bā'ah and therefore are not encouraged to marry according to this Hadith.

Child marriage is a complex social phenomenon in Indonesia, and its practice cannot be separated from the context of 'urf (customary practice) and customary legal systems that are deeply rooted in society.[16] In the tradition of Islamic legal thought, 'urf is defined as a practice accepted and commonly observed by society, whether in the form of speech or conduct.[17] In Indonesia, child marriage has often been legitimized through longstanding interpretations of customary and religious norms. In several regions, local customs or 'urf continue to regard early marriage as socially acceptable, particularly when it is motivated by economic considerations, the preservation of family honor, or inherited traditions.[18] However, from the perspective

[12] Jasser Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*, (Bandung: Mizan, 2015), 86.
[13] Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*. 84-85.
[14] Muhammad bin Ahmad Al-Qurthubi, *Al-Jami' li Ahkam al-Qur'an*, (Kairo: Dar al-Kutub al-Misriyyah,1964), Juz 5, 23-25.
[15] Yahya bin Syaraf al-Nawawi, *Syarḥ Ṣaḥiḥ Muslim*, (Beirut: Dar Ihya' al-Turath al-'Arabi), juz 9, 173.
[16] Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts* (Amsterdam: Amsterdam University Press, 2010), 89-92.
[17] Muhammad Abu Zahrah, *Ushul al-Fiqh* (Kairo: Dar al-Fikr al-'Arabi, 1958), 217.
[18] Nur Rofiah, *Eksplorasi Lanjut atas Hak-Hak Reproduksi Perempuan dalam Islam*, (Jakarta: Gramedia Pustaka Utama, 2008), 123-145.

of contemporary Islamic law and national legislation, such practices cannot be justified because they conflict with the objectives of marriage (maqāṣid al-nikāḥ), which require physical, psychological, and social preparedness on the part of both prospective spouses.[19]

Based on an analysis of the cognitive nature feature within Jasser Auda's Systems Theory, it can be concluded that Islamic law is the product of human reasoning and understanding of sacred texts rather than an absolute and direct divine command. Accordingly, Islamic law remains open to reinterpretation in accordance with developments in knowledge, social contexts, and the objectives of realizing maslahah (maqāṣid al-sharī'ah). In this context, a cognitive analysis of the Islamic legal evidence concerning marriage produces several important conclusions that are consistent with the spirit of legal protection embodied in the UU TPKS. Maturity as a Substantive Requirement for Marriage. Qur'anic verses such as Q.S. al-Nisā' [4]: 6 and Hadiths concerning the requirement of al-bā'ah affirm that maturity is not measured solely in biological terms but also encompasses intellectual, emotional, and social dimensions. Accordingly, child marriage conducted before comprehensive maturity has been attained conflicts with Islamic legal principles emphasizing rushd, namely intellectual maturity and the capacity to assume responsibility. This perspective is consistent with Articles 4 and 5 of the UU TPKS, which affirm that sexual relations must be based on voluntariness, free from coercion, and supported by the capacity to provide conscious consent without pressure.

Cognitive Integration of Fiqh and National Law. Through Jasser Auda's systemic approach, both Islamic law and national law can be understood as dynamic systems of knowledge that interact with and complement one another. Contemporary ijtihād supporting the prohibition of child marriage should not be understood as a deviation from the Islamic legal tradition but rather as a form of cognitive renewal aimed at achieving social justice and protecting children. Accordingly, the implementation of the UU TPKS does not contradict Islamic law; rather, it constitutes an actualization of maqāṣid aimed at preventing sexual violence and safeguarding human dignity.

Thus, through the cognitive nature of systems approach developed by Jasser Auda, it can be affirmed that child marriage constitutes a deviation from the objectives of maqāṣid al-sharī'ah and fulfills the elements of a sexual violence crime as regulated under Law No. 12 of 2022. When understood cognitively and in an objective-oriented manner, both Islamic law and national law reject practices that disregard maturity and informed consent and that result in social and biological harm.

Second, the Wholeness feature requires Islamic law to be understood as an integrated and coherent whole rather than as a collection of separate components. Accordingly, the application of Islamic law should be approached holistically and integratively. The wholeness feature emphasizes the importance of viewing Islamic law as a holistic and integrated system rather than through an atomistic approach that considers individual legal texts in isolation without taking their systemic interconnections into account.[20] In the context of child marriage as a sexual violence crime, a comprehensive thematic analysis is therefore necessary. An examination of

[19] Nurul Irfan, Masyrofah, *Fiqh Jinayah* (Jakarta: Kencana, 2013), 56–57.
[20] Jasser Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*, (Bandung: Mizan, 2015), 86-88.

Qur'anic verses such as Q.S. al-Rūm [30]: 21, Q.S. al-Naḥl [16]: 72, and Q.S. al-Baqarah [2]: 187 leads to the holistic conclusion that the objectives of marriage articulated in the Qur'an—sakinah, mawaddah, raḥmah, the establishment of a healthy family and offspring, and mutual protection—require preparedness and maturity from both spouses. An immature child cannot reasonably be expected to realize these objectives.

The wholeness approach provides an understanding that all Qur'anic verses concerning maturity, the objectives of marriage, and child protection constitute an integrated value system that cannot be separated into isolated components. When understood integratively, child marriage constitutes a violation of the holistic structure of Islamic law because it undermines the coherence of *maqāṣid al-sharī'ah* in protecting life (ḥifẓ al-nafs), dignity and honor (ḥifẓ al-'irḍ), and progeny (ḥifẓ al-nasl). Within the framework of national law, Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS) functions as a normative implementation of the principle of comprehensive human protection, which is also promoted by Islamic law. The UU TPKS does not merely prohibit physical forms of sexual violence but also recognizes forms of violence arising from power relations, age disparities, and conditions of immaturity that are inherently present in child marriage.

Articles 4 and 5 of the UU TPKS affirm that sexual relations without free and conscious consent constitute a criminal act of sexual violence. At the same time, Article 10 of the UU TPKS explicitly stipulates that forced marriage constitutes a sexual violence crime. This provision encompasses situations in which a marriage is entered into without valid consent, including marriages involving minors, whether resulting from social, economic, or customary pressure. Article 10 of the UU TPKS therefore also functions as a positive legal instrument that reinforces the holistic protection principle found in Islamic law by preventing sexual exploitation and forced marital relationships that contradict human dignity and the objectives of maqāṣid al-sharī'ah. Viewed through the perspective of wholeness, this provision reflects Islam's integrated conception of protecting human dignity, in which the marital relationship must be grounded in equality, mutual affection, and the maturity of both parties.

Thus, both Islamic law and the UU TPKS operate within a shared value system: the comprehensive protection of human beings from all forms of sexual exploitation and oppression of vulnerable parties. The UU TPKS serves as a positive legal instrument that strengthens the principle of wholeness in Islam by ensuring the protection of children and women as an inseparable component of the integrity of the family and society. Accordingly, from Jasser Auda's perspective, the application of the UU TPKS to cases of child marriage constitutes an actualization of an integrated legal system oriented toward maslahah and social justice.

Third, the Openness feature in Jasser Auda's Systems Theory emphasizes that the Islamic legal system must remain open to developments in scientific knowledge, social conditions, and changing contexts. This openness is manifested through two mechanisms. First, legal change may occur through changes in the worldview or the cognitive nature of the jurist. Second, philosophical openness entails adopting Ibn Rushd's principle concerning the importance of philosophical reasoning based on sound rationality regardless of the religious affiliation of its proponents.[21]

[21] Jasser Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*, (Bandung: Mizan, 2015), 88-89.

From a medical and public health perspective, various studies demonstrate that child marriage has serious adverse effects on reproductive, mental, and social health. In terms of reproductive health, pregnant adolescents aged 10–19 face a risk of pregnancy complications up to 50% higher than women aged 20–24. The risk of preterm birth is also elevated, and babies born to adolescent mothers are more likely to have low birth weight. In addition, maternal mortality among women aged 15–19 has been reported to be twice as high, while among those under 15 it may be five times higher than among women aged 20–29. Serious complications such as *obstetric fistula* may occur as a result of anatomically immature pelvic development, while sexual activity at a very young age may increase the risk of cervical cancer later in life.[22]

From a social and developmental perspective, child marriage contributes to school dropout among girls; approximately 90% of girls who marry do not continue their education after marriage.[23] The burden of domestic responsibilities and severe psychological pressure may hinder optimal cognitive development and contribute to economic dependency as a result of limited education and skills. In terms of mental health, children who marry at an early age are more vulnerable to psychological disorders, including depression, anxiety, and trauma resulting from forced sexual relations or sexual relations occurring under conditions of insufficient preparedness. Some victims may even develop post-traumatic stress disorder (PTSD) and exhibit suicidal tendencies.[24]

From the perspectives of psychology and traumatology, sexual relations within child marriage possess characteristics of sexual violence. This is because children generally lack the cognitive and emotional capacity to provide genuinely free and informed consent, while substantial power imbalances exist between children and their spouses, who are typically considerably older, as well as between children and family members who compel the marriage. Children's physical and psychological immaturity may result in profound trauma similar to that experienced by other victims of sexual violence, particularly when they have no viable means of exiting the relationship because of social constructions that position wives as obligated to serve their husbands.[25] The World Health Organization (WHO) explicitly recognizes child marriage as a form of gender-based violence and a violation of human rights that must be eliminated through integrated national policies and global efforts.[26]

From the perspective of openness, Islamic law can therefore be understood as a dynamic system that responds to social realities. Medical, psychological, and social evidence concerning the adverse consequences of child marriage constitutes a new cognitive basis that enriches the interpretation of Islamic law. Consequently, child marriage can no longer be viewed merely as a matter of custom or religion but must

[22] World Health Organization (WHO), *Adolescent Pregnancy: Issues in Adolescent Health and Development* (Geneva: WHO, 2004), 12–14.
[23] United Nations Population Fund (UNFPA), *Marrying Too Young: End Child Marriage* (New York: UNFPA, 2012), 27. https://www.unfpa.org/publications/marrying-too-young
[24] UNICEF, *Ending Child Marriage: Progress and Prospects* (New York: UNICEF, 2014), 19–20. https://data.unicef.org/resources/ending-child-marriage-progress-and-prospects/
[25] Nawal M. Nour, "Health Consequences of Child Marriage in Africa," *Emerging Infectious Diseases* 12, no. 11 (2006): 1644–1649.
[26] World Health Organization (WHO), *Child Marriage: A Threat to Health and Human Rights* (Geneva: WHO, 2021). https://pmc.ncbi.nlm.nih.gov/articles/PMC2672998/

also be understood as a structured form of sexual violence that violates principles of justice and humanity.

Within the framework of national law, Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS) represents a concrete manifestation of the openness of law to developments in knowledge and modern human rights values. Article 10 of the UU TPKS expressly provides that forced marriage constitutes a sexual violence crime, including when it is committed against a child. This provision encompasses any act that causes a person, particularly a child, to enter into marriage without free, conscious, and equal consent, whether as a result of family coercion, social pressure, or economic manipulation.

The openness of the UU TPKS to medical, psychological, and sociological perspectives makes it a legal instrument that not only prosecutes perpetrators but also provides comprehensive protection for victims, including physical and psychological recovery for children who have been forcibly married. Thus, Article 10 of the UU TPKS can be understood as a manifestation of the principle of openness within the contemporary Islamic legal system: it incorporates empirical knowledge and universal human values to strengthen the protection of children and women. This openness demonstrates that maqāṣid al-sharī'ah and the UU TPKS are not contradictory but instead operate in parallel in developing a legal system that is adaptive, contextual, and oriented toward human welfare.

Fourth, the Interrelated Hierarchy feature in Jasser Auda's Systems Theory emphasizes that the Islamic legal system has an interconnected hierarchical structure in which different levels support and contribute to the realization of the objectives of Islamic law. According to Jasser Auda, *maqāṣid al-sharī'ah* do not operate independently but are structured across three interconnected levels: *maqāṣid al-'āmmah* (general and universal objectives), *maqāṣid al-khāṣṣah* (specific objectives within particular fields), and *maqāṣid al-juz'iyyah* (particular objectives underlying specific legal rulings).[27] This feature also expands the scope of maqāṣid from the individual dimension to public and social dimensions.

At the level of *maqāṣid al-'āmmah*, the universal objectives of Islamic law encompass values such as justice ('adl), freedom (ḥurriyyah), human dignity (karāmah), compassion (raḥmah), and facilitation (taysīr). The Qur'an affirms justice as a fundamental value, as reflected in Q.S. al-Nisā' [4]: 58 and Q.S. al-Mā'idah [5]: 8. In the context of child marriage, this principle of justice is violated because children lack an equal bargaining position, girls are disproportionately affected, and fundamental rights such as education and health are neglected. The principle of freedom, which in the classical maqāṣid framework is associated with the protection of religion (ḥifẓ al-dīn), has developed to encompass the protection of freedom of belief (ḥifẓ al-ḥurriyyah al-i'tiqād) as well as children's freedom from coercion and sexual violence. Likewise, child marriage resulting in sexual violence contradicts the principle of human dignity affirmed in Q.S. al-Isrā' [17]: 70, as well as the values of compassion (raḥmah) and facilitation (taysīr) that constitute essential dimensions of Islamic law.[28]

[27] Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: International Institute of Islamic Thought, 2008), 57–60.
[28] Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach,* 68-74.

Within the framework of maqāṣid al-khāṣṣah, namely the specific objectives of the law of marriage, Islam emphasizes the establishment of sakinah, mawaddah, and raḥmah, as stated in Q.S. al-Rūm [30]: 21. However, child marriage conducted under coercion or conditions of insufficient maturity instead tends to generate conflict and domestic violence. The protection of honor (ḥifẓ al-'irḍ), which is sometimes invoked as a justification for marrying off children, is in fact undermined because children may experience social stigma and loss of dignity as a consequence of sexual violence within marriage.[29] Furthermore, the objective of ensuring healthy and sustainable offspring (ḥifẓ al-nasl al-jayyid) is compromised because child marriage may result in offspring facing elevated health risks and being raised by parents who are not yet sufficiently mature to assume parental responsibilities. Consequently, the ultimate objectives of marriage, namely family happiness and well-being, may also fail to materialize because of the high incidence of violence and divorce associated with child marriage.[30]

Meanwhile, at the level of maqāṣid al-juz'iyyah, namely the particular objectives underlying specific legal rulings, several principles are relevant. First, the principle of kafā'ah (compatibility or equality) in marriage aims to promote marital harmony; however, child marriage involves extreme disparities in physical, psychological, and economic maturity.[31] Second, the requirement of a woman's permission (idhnu al-mar'ah) reflected in the relevant Hadiths demonstrates the importance of free consent, whereas children may lack the capacity to provide genuine consent.[32] Third, Q.S. al-Nisā' [4]: 6, which prohibits handing over the property of orphans before they attain maturity, reflects a principle of protecting children from exploitation, which is likewise relevant to preventing early marriage. Fourth, the provision concerning mahr in Q.S. al-Nisā' [4]: 4 is intended as a form of respect and recognition of the wife's rights; however, in the practice of child marriage, it may be misused as an economic transaction between families.

Thus, child marriage contradicts the particular objectives of Islamic law that seek to preserve justice, freedom, and respect for human dignity. Jasser Auda also emphasizes that maqāṣid apply not only to individuals but also encompass public and social dimensions.[33] In this context, child marriage has broader public health consequences, including increased maternal and infant mortality and a higher prevalence of stunting.[34] From the perspective of education and human resource development, child marriage contributes to high school dropout rates and undermines the quality of future generations.[35] The Interrelated Hierarchy feature emphasizes that the various dimensions of maqāṣid are interconnected and

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[29] Muhammad Tahir Azhary, *Maqashid Syariah dalam Hukum Islam* (Jakarta: Kencana, 2017), 112–113.
[30] Yusuf al-Qaradawi, *Maqasid al-Syari'ah al-Muta'alliqah bi al-'Usrah wa al-Aila* (Cairo: Dar al-Shuruq, 2010), 35.
[31] Wahbah al-Zuhayli, *al-Fiqh al-Islami wa Adillatuhu*, Vol. 7 (Damaskus: Dar al-Fikr, 1989), 35–37.
[32] Muslim ibn al-Ḥajjaj, *Ṣaḥiḥ Muslim*, Kitab al-Nikaḥ, Bab Istidzan al-Bikr fi al-Nikaḥ, Hadis No. 1419 (Beirut: Dar Ihya' al-Turāth al-'Arabi), Juz 4, 141.
[33] Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: International Institute of Islamic Thought, 2008), 91-93.
[34] World Health Organization (WHO), *Child Marriage: A Threat to Health and Human Rights* (Geneva: WHO, 2021), 7–9. https://pmc.ncbi.nlm.nih.gov/articles/PMC2672998/
[35] UNICEF, *Ending Child Marriage: Progress and Prospects* (New York: UNICEF, 2014), 18–20. https://data.unicef.org/resources/ending-child-marriage-progress-and-prospects/

collectively promote the protection of human life, dignity, freedom, and progeny. Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS) substantially reflects the values of *maqāṣid al-sharī'ah*, particularly *ḥifẓ al-nafs, ḥifẓ al-'irḍ, and ḥifẓ al-nasl*, through provisions protecting victims of sexual violence, including children subjected to child marriage. Child marriage disrupts the hierarchical structure of maqāṣid because it disregards general objectives, such as justice and human dignity; specific objectives, such as welfare and compassion within marriage; and particular objectives, such as consent, equality, and child protection.

Law No. 12 of 2022 on Sexual Violence Crimes substantially reflects this hierarchical structure of maqāṣid within the framework of positive law. At the level of universal values (maqāṣid al-'āmmah), the UU TPKS affirms the state's commitment to justice, gender equality, and respect for human dignity, as reflected in its considerations and Article 4 concerning the objectives of the law. At the level of specific objectives (maqāṣid al-khāṣṣah), Article 10 of the UU TPKS expressly categorizes forced marriage as a form of sexual violence crime, including situations in which the relationship may appear legally or customarily valid but is not based on free, conscious, and equal consent. This provision serves to uphold the values of *ḥifẓ al-'irḍ* (protection of honor), *ḥifẓ al-nafs* (protection of life), and *ḥifẓ al-nasl* (protection of progeny), which constitute core objectives within Islamic law.

At the level of particular objectives (maqāṣid al-juz'iyyah), the operational provisions of the UU TPKS, particularly Articles 67–74 concerning the protection, assistance, and recovery of victims, assistance, and recovery represent the Islamic legal principles of *raf' al-ḍarar* (removal of harm) and *jalb al-maṣlaḥah* (bringing about benefit). This layered approach demonstrates that Indonesian positive law has developed a hierarchy of values comparable to Jasser Auda's *maqāṣid* system, in which the victim protection and prevention of sexual violence constitute direct implementations of *maqāṣid* within a contemporary context. Therefore, application of the UU TPKS is consistent with Jasser Auda's principle of the hierarchical *maqāṣid*. It functions as mutually reinforcing legal systems for protecting the dignity, reinforcing legal worth, and future systems for protecting the dignity, worth, and future of children from all forms of sexual violence concealed within the practice of child marriage. Fifth, the Multidimensionality feature in Jasser Auda's System Theory emphasizes that issues of Islamic law must be understood through multiple complementary dimensions rather than through a single dimension that may appear to produce contradictory conclusions.[36] This multidimensional approach helps avoid misleading dichotomous reasoning and creates space for more comprehensive solutions. In the context of child marriage as a form of sexual violence, multiple dimensions must be considered simultaneously to produce a more holistic analysis of Islamic law.

First, from the textual and contextual dimensions, some legal texts do not explicitly prohibit child marriage, and historical accounts of Islamic societies indicate that marriage at a young age occurred in the past. However, the social, economic, and health conditions of the past differed significantly from contemporary circumstances, in which scientific developments and global standards concerning children's rights have demonstrated the adverse consequences of child marriage.

[36] Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: The International Institute of Islamic Thought, 2008), 58–60.

Accordingly, the text cannot be separated from its context. Integrating text and context demonstrates that child marriage may cause *ḍarar* (harm), which must be prevented in accordance with the Prophetic principle, "*lā ḍarar wa lā ḍirār.*"[37]

Second, from the spiritual and material dimensions, marriage possesses religious and spiritual value as an act of worship and a means of seeking God's pleasure, but it also encompasses biological, economic, and social dimensions. Integrating these dimensions indicates that a marriage considered religiously valid must also generate material and social welfare. Therefore, a child marriage that produces material ḍarar cannot be regarded as fulfilling the spiritual objectives intended by Islamic law.[38]

Third, from the local and universal dimensions, every society has distinct traditions, including Indonesia, which possesses its own diverse cultural characteristics. Nevertheless, human rights principles have universal significance, and the adverse consequences of child marriage are likewise universal. Accordingly, local traditions that conflict with universal principles of child protection require reform. Islam, as a religion characterized as *raḥmatan li al-'ālamīn* (a mercy to all worlds), supports universal principles that protect human dignity and humanity.[39]

Fourth, from the dimensions of exemption and absolute prohibition, a debate arises as to whether child marriage should be prohibited entirely or permitted under certain exceptional circumstances through a marriage dispensation. The absolute-prohibition perspective emphasizes that the adverse consequences of child marriage are too serious to tolerate and that marriage dispensations are frequently subject to misuse. Conversely, the limited-dispensation perspective argues that, under highly exceptional circumstances, a dispensation may be necessary. An ideal multidimensional solution would establish an absolute minimum marriageable age—for example, 19 years—below which no dispensation may be granted; impose stringent requirements such as the child's consent and psychological assessment; and ensure effective supervision and alternative solutions, such as economic assistance. Nevertheless, given the substantial risk of abuse and the harms involved, the most appropriate approach is absolute prohibition accompanied by alternative solutions for genuinely exceptional circumstances.[40]

The Multidimensionality feature in Jasser Auda's framework emphasizes that Islamic law must operate across the various dimensions of human life—text and context, spiritual and material, and local and universal—in a complementary rather than mutually exclusive manner. When this principle is applied to child marriage, the practice is shown to generate *mafsadah* across multiple dimensions: physical and reproductive health (biological), trauma and depression (psychological), poverty and social inequality (economic), and gender injustice and violations of children's rights (moral and social). Therefore, addressing child marriage cannot rely solely on religious fatwas or on a single form of legal enforcement. Instead, it requires a comprehensive, multilayered, and contextual approach, as emphasized by Auda,

[37] Abu Dawud Sulaiman, *Sunan Abi Dawud*, Juz 3, Kitab al-Buyu', Hadis No. 3458 (Beirut: Dar al-Risalah al-'Alamiyyah, 2009), 272.
[38] Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuh*, Jilid 9 (Damaskus: Dar al-Fikr, 1989), 6634.
[39] Komnas Perempuan, *Perkawinan Anak dalam Perspektif Hak Asasi Manusia* (Jakarta: Komnas Perempuan, 2021), 18.
[40] Kementerian Pemberdayaan Perempuan dan Perlindungan Anak (KemenPPPA), *Pedoman Pencegahan Perkawinan Anak* (Jakarta: KemenPPPA, 2020), 22–25.

involving synergy among spiritual, social, psychological, and public health values to achieve human welfare comprehensively.

This multidimensional approach is consistent with Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS), which is conceptually designed as an integrated protection system. Article 4 of the UU TPKS establishes objectives relating to the prevention of sexual violence, victim protection, handling, and recovery through a comprehensive framework; Article 10 affirms that forced marriage, including child marriage, constitutes a form of sexual violence; while Articles 67–74 regulate mechanisms for victim recovery, rehabilitation, and social reintegration. Articles 76–79 further assign the government and society active roles in prevention. Collectively, these provisions reflect the application of multidimensional systems thinking, as developed by Jasser Auda, in which law must operate across medical, psychological, social, economic, and spiritual dimensions. Thus, both *maqāṣid al-sharī'ah* within the Islamic legal system and the UU TPKS converge within a multidimensional system of human protection, safeguarding *ḥifẓ al-nafs* (protection of life), *ḥifẓ al-'irḍ* (protection of dignity and honor), and *ḥifẓ al-nasl* (protection of progeny) from forms of sexual violence concealed within the practice of child marriage.

Sixth, the Purposefulness feature constitutes the most fundamental aspect of Jasser Auda's Systems Theory because it serves as the axis that unifies the other five features. In Auda's view, every legal system must produce outcomes directed toward identifiable goals and purposes, which can be assessed according to the extent to which the system generates tangible benefits for human beings. Accordingly, all elements of the system—cognition, wholeness, openness, interrelated hierarchy, and multidimensionality—are meaningful insofar as they contribute to the realization of the purpose of Islamic law, namely maqāṣid al-sharī'ah. Within this framework, the validity of an ijtihād is not measured solely by its conformity with the text but also by the extent to which its outcome realizes the protection of the five principal objectives of *maqāṣid: religion* (ḥifẓ al-dīn), life (ḥifẓ al-nafs), intellect (ḥifẓ al-'aql), dignity and honor (ḥifẓ al-'irḍ), and progeny (ḥifẓ al-nasl).[41]

Based on an analysis of child marriage through the six features of Jasser Auda's Systems Theory, it can be concluded that child marriage is inconsistent with the value system and objectives of Islamic law. From the perspective of the cognitive nature, a contextual and cognitive understanding of the relevant sources of Islamic law—the Qur'an, Hadith, and legal maxims—indicates grounds for prohibiting child marriage insofar as it has the potential to result in sexual violence. From the perspective of wholeness, a holistic approach to Qur'anic themes and maqāṣid al-sharī'ah indicates that child marriage conflicts with the integrated value system of Islam. Under the feature of openness, findings from various disciplines, including health, psychology, sociology, economics, and human rights, converge in demonstrating the harms associated with child marriage and its characteristics as a form of sexual violence. From the perspective of interrelated hierarchy, child marriage conflicts with the various levels of *maqāṣid al-sharī'ah*, including *maqāṣid al-'āmmah, maqāṣid al-khāṣṣah,* and *maqāṣid al-juz'iyyah*, because it threatens the realization of the public interest (maṣlaḥah 'āmmah). Meanwhile, under the feature of multidimensionality, the various dimensions—text and context, spiritual and material, local and universal,

[41] Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: The International Institute of Islamic Thought, 2008), 27–30.

and dispensation and absolute prohibition—all point toward the rejection of child marriage.

Finally, under the feature of purposefulness, child marriage fails to achieve the objectives of Islamic law and instead generates substantial mafsadah (harm), thereby necessitating prevention in order to realize the welfare of society. Applying the principle of purposefulness to child marriage demonstrates that the practice fails to fulfill the objectives of Islamic law. Child marriage does not necessarily produce sakinah (tranquility), raḥmah (compassion), or maṣlaḥah (welfare); rather, it may generate mafsadah in the form of sexual violence, psychological trauma, and violations of human dignity. Accordingly, child marriage conflicts with ḥifẓ al-nafs because it threatens children's lives and health, with ḥifẓ al-'irḍ because it compromises their dignity through sexual coercion, and with ḥifẓ al-nasl because it may undermine the well-being and quality of future generations.

Within the framework of positive law, the principle of purposefulness is reflected in Article 4 of the UU TPKS, which establishes the objectives of preventing, addressing, protecting, and restoring victims of sexual violence comprehensively. Article 10 of the UU TPKS specifically categorizes forced marriage, including child marriage, as a criminal act of sexual violence because such practices undermine the fundamental objectives of marriage and transform marriage into an instrument of oppression against children. Furthermore, the purposefulness orientation of the UU TPKS is operationalized through Articles 67–74, which regulate mechanisms for victim recovery, rehabilitation, and social reintegration, as well as Articles 76–79, which establish the responsibilities of the government and society in preventing sexual violence.

These provisions demonstrate that Indonesian national law has moved beyond merely punishing perpetrators toward a legal system oriented toward a broader humanitarian purpose, namely the comprehensive protection, recovery, and empowerment of victims. Thus, within both the framework of maqāṣid al-sharī'ah and the UU TPKS, law must function to preserve human life, dignity, and future well-being. Therefore, preventing and enforcing the law against child marriage is not merely a moral obligation but also a concrete manifestation of a purposeful legal system—one that operates dynamically to achieve universal human welfare and eliminate forms of sexual violence that contradict the objectives of Islamic law and constitutional principles.

Conclusion

Based on the findings of this study on child marriage as a criminal offense of sexual violence from the perspective of Jasser Auda's Systems Theory, two main conclusions can be drawn. First, Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS) affirms that any form of sexual relationship involving children, whether coerced or not, falls within the category of sexual violence. Accordingly, child marriage may be qualified as a form of sexual violence when it involves individuals who have not attained sufficient physical, psychological, and social maturity, even where the marriage has been formally legalized through a court-issued marriage dispensation. Normatively, the Sexual Violence Crimes Law prioritizes the protection of children and women, in accordance with the principles of human rights.

Second, from the perspective of Jasser Auda's Systems Theory, Islamic law is understood as a system characterized by cognitive nature, wholeness, openness,

interrelated hierarchy, multidimensionality, and purposefulness. In the context of child marriage, this theory emphasizes that Islamic law should not be understood textually or partially, but rather systemically and with reference to the objectives of maqāṣid al-sharī'ah. An analysis of the Qur'anic verses and Hadith indicates that the fundamental objectives of marriage include the attainment of sakinah, mawaddah, and raḥmah, as well as the protection of progeny (ḥifẓ al-nasl), life (ḥifẓ al-nafs), intellect (ḥifẓ al-'aql), and dignity (ḥifẓ al-'irḍ). Child marriage cannot adequately realize these objectives because, in practice, it may cause physical, psychological, and social harm, thereby contradicting the principle of maṣlaḥah in Islamic law. Thus, within the framework of Jasser Auda's Systems Theory, child marriage constitutes not only a violation of the objectives of maqāṣid al-sharī'ah, but may also constitute a Sexual Violence Crime under the Sexual Violence Crimes Law and should therefore be prevented by the state and Muslim society. Such categorization is consistent with the purpose-oriented character of Islamic law (purposefulness), namely, realizing benefits (jalb al-maṣāliḥ) and preventing harm (dar' al-mafāsid) for humanity, particularly vulnerable groups such as children and women.

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