

FACTORS OF FORCED EARLY MARRIAGE REVIEWED FROM ISLAMIC LAW IN INDONESIA (CASE STUDY OF AIR HITAM VILLAGE, GEBANG DISTRICT, LANGKAT REGENCY)



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Abstract

This research aims to determine the factors of coercion in early marriage. find out how Islamic law in Indonesia analyzes the coercion of underage children into marriage. This research was designed using qualitative methods to be able to explain in as much detail as possible about forced early marriage. This research is normative-empirical research with a sociological approach. The primary data source was obtained from interviews with several respondents, while the secondary data source was obtained from several references that explain forced marriage in Indonesian Islamic law. Meanwhile, the analysis technique is descriptive. The results of this research found that many factors led to attempts to force early marriage in Air Hitam village due to several factors such as economic reasons, low education, and lack of understanding of religion. So, from the results of this research, it is concluded that forced early marriage is caused by economic factors, education, and religious understanding. analysis of Islamic law regarding forced marriage of underage children, referring to the majority of ulama or the majority of ulama saying that it is haram or not permissible to force girls (underage) to marry. The majority of ulama view that forcing the marriage of minor girls (underage) does not bring benefits at all, it even becomes a shackle for the child's freedom so that his future is threatened.

Keywords: Forced Marriage, Minors, Islamic Law

INTRODUCTION

Sharia is an important concept that is used as a guideline in navigating the lives of Muslims which is of course based on the Qur'an and Hadith. This concept was taught by the Prophet Muhammad SAW as a role model and bearer of the message of truth (Rahayu & Muzhaffar, 2022). Islamic law as part of sharia has always been a debate because its entity can change under certain conditions and times. This does not rule out the possibility of differences in understanding the law that has been written in the text or practices that are running in society. One of them is related to marriage law starting from the contract, conditions, pillars, and other procedures (Mohsi, 2020).

In today's technological era, getting married at a young age is seen as a throwback to the past, when education and research on marriage were still underdeveloped. Early marriage does not only occur in rural areas but also occurs in big cities because of promiscuity which can lead to pregnancy out of wedlock. Ultimately, getting married at a very young age has a significant impact on the likelihood of divorce. Data from 2010 to 2020 shows that the divorce rate in Indonesia is increasing, often caused by personal incompatibility and economic factors. This problem often causes conflict because each partner clings to their respective egos, and this situation is made worse by the increasing age of a married couple. Divorce is often the solution of choice for couples who are trapped in a monotonous situation or when their partner does not meet expectations before marriage. Changes in perspective and unfulfilled expectations increasingly encourage the desire to divorce (Iwan et al., 2024).

Forced marriage is a deviation and violence against children. One form of violence against children is forced marriage. The effects of this action can be more severe than physical violence. Although sometimes forced marriages end with a happy ending in the form of domestic happiness, quite a few result in disharmony or divorce. This is all the result of a marriage bond that is not based on love but stems from sheer compulsion. Women's lack of understanding of their husband's characteristics in many cases causes feelings of anxiety, stress, fear, reluctance, and anger, or even running away from their husbands and vice versa, because of their age and mental unpreparedness they will build a household without volunteering. Usually, this occurs in the months Firstly, at the beginning of their marriage,

women who have married in the age group under the provisions of the law are still reluctant to marry. However, they were forced to undergo the marriage only for reasons of respecting (not daring to go against) their parents' wishes (Khairuddin, 2020).

And more Forced marriages against minors are people closest to the victim, they are always based on love but end up suffering in the child. Parents often commit violence, for example, because they feel they own the child (Abidin, 2024). This sense of ownership makes him treat his child arbitrarily, without looking at the negative effects it causes, even to the point of taking away the child's freedom to choose his life partner. One form of violence against children is forced marriage. The effects of this action can be more severe than physical violence. Although sometimes forced marriages end in a happy ending in the form of domestic happiness, there are quite a few that result in disharmony or divorce. This is all the result of a marriage bond that is not based on love but rather stems from sheer compulsion (Maudian & Shulton, 2023).

Meanwhile, if we examine the law in KHI article 16 paragraphs 1 and 2 it says that (Compilation of Islamic Law, 2021):

- 1) Marriage is based on the consent of the prospective bride and groom.
- 2) The form of consent from the prospective bride can be in the form of a firm and real statement in writing, verbally, or by gesture, but can also be in the form of silence, meaning as long as there is no firm rejection.

In this KHI we can see that marriage must be based on the consent of the prospective bride and groom, in other words, it must be based on mutual consent, not coercion. Many parents use their guardianship rights to marry off their children under their guardianship without their child's knowledge, not based on their child's wishes as if the child does not have the right to choose the life partner he or she likes.

In general, the Islamic jurisprudence literature does not explain differences of opinion regarding marriage age limits. Regarding the issue of marriage law, some scholars believe that the law is *makruh* considering the benefits. *Makruh* in the sense that it can be done but it is better to abandon it or not do it (Randa, 2024). When reviewing child marriages both

psychologically and physically, even though they have reached puberty and have gone through menstruation, girls are certainly not ready to carry the burden of being a housewife. So, in this perspective, girls are considered not beneficial and can even cause *mafsadah*. These considerations are also shared by some Shafiiyya *Mazab* or those who follow the Syafii *Mazab* (Mohsi, 2021).

We often encounter this phenomenon, where parents are trapped in the idea that forcing their children to marry quickly, can lighten up their parental responsibilities and their children can live their household with peace and tranquility in their child's household in the future, but this is not almost entirely successful. In the case found in Air Hitam Gebang, there was a minor child whose parents were forced or choose their future husband, which gave rise to new problems.

Early marriage has many negative impacts because underage marriage is not an easy thing, especially if it happens because of coercion, lack of mental readiness also tends to have a bad impact on relationships, not only negative impacts but early marriage also has an impact on other social problems.

Forced marriage occurs due to many things that will influence a person to enter into an unwanted marriage, for example, to ease the family's economy, dropping out of school which causes parents to worry if the child is not married off, and circumstances beyond the parent's control, fearing that pregnancy will occur outside of marriage. All of these things forced the marriage to happen.

REVIEW OF LITERATURE

In this research, the author will compare the findings with relevant previous studies. One of the studies that is used as a reference is the work Ilya (2023) which discusses "Protection of Women from Forced Marriage from a Maqashid Syari'ah Perspective" based on the study of the 2nd KUPI Fatwa No. 06/MK-KUPI-2/XI/2022, published in the AL-MANHAJ journal in 2023. This research highlights aspects of women's protection in the context of forced marriage according to the Maqashid Syari'ah perspective. Apart from that,

the author also refers to the analysis carried out by Mohsi (2020) in his article entitled "Analysis of Forced Marriage as a Crime of Sexual Violence in the PKS Bill" published in the Al-Adalah Journal in 2020. Mohsi examines forced marriage in the context of criminal law as a form of sexual violence regulated in the PKS Bill. These studies provide a strong basis for understanding the issue of forced marriage from the perspective of Islamic law and contemporary legal policy.

RESEARCH METHOD

The method used in this research is research with field objects (field research). The research that the author conducted is empirical, looking at the legal phenomenon, namely forced marriage of underage children. Primary data sources were obtained through interviews with community and religious leaders. Secondary data is complementary data to strengthen primary data obtained from various sources such as books, documents, journals, websites, or other archives that are relevant to the research. (Kusumastuti & Khoiron, 2021).

RESULTS AND DISCUSSION

Factors and Views of the People of Air Hitam Village, Gebang District Regarding Forced Early Marriage

Forced marriage is a marriage that is carried out not based on one's own will, but because of pressure or pressure from another party. Forced marriage can be carried out by parents, society, or other parties who have the power to force someone to marry, for various reasons, so that someone has to marry without their consent, or marry someone who is not of their own choice. Many forced marriage phenomena occur throughout the world for various different reasons. There have been many studies that prove that forced marriages do happen. Not only in our environment, even throughout this country, and even in all countries on this earth (Hasibuan, 2020).

According to incidents in Air Hitam village, several children were forced into early marriage because their parents had economic limitations and could no longer afford to pay

for their children's needs. Even though the child has tried to reject it, the parents still force and threaten their child, such as not giving them money, or committing violent acts such as hitting their child and throwing them out of the house. Others said that their parents already had an agreement regarding their child's marriage, if their child did not comply with their parents' wishes, they would be considered a disobedient, disobedient child, branded as a bad child in the neighborhood, and become the subject of talk from neighbors. The impact that occurs due to forced early marriage by parents when the child is not yet ready to marry will cause many problems such as triggering the child's disharmonious home life, psychological and physical disorders in the child, and even divorce. This happens because they are still in the developmental stages of mental, physical, and spiritual growth in adolescence. Where teenagers do not yet have a stable emotional and psychological condition. When facing a problem, each of them often maintains their ego, so they do not have a sense of giving in, understanding and trying to maintain their household.

The research results found that many factors led to attempts to force early marriage in Air Hitam due to several factors such as economic reasons, low education, and religious understanding.

a. Economic factors (Reducing or lightening the economic burden)

Economic factors are the main problem and the impact of these factors is the forced marriage of underage children by parents on their children:

Maryadi "to lighten the family's burden, by forcing children to marry quickly, which is a natural thing. Moreover, if the child marries, he will build a household and be able to help his younger siblings in the future. Girls who are considered adults should be married off immediately so that they don't fall into the promiscuity that is currently happening in an increasingly open and free world. In this way, we can look after children and lighten parents' responsibilities." (interview with Maryadi, Gebang Black Water Community, on August 10th, 2024).

Furthermore, Muhammad Idham stated: that by forcing girls to marry quickly, this is the view of society, some of whom are in the lower middle-class economy, that marrying girls can take care of children and lighten the burden and responsibility of parents on their children. Apart from that, there are also other factors, for example: Factors Due to the existence of forced marriages which have been passed down from generation to generation in the family. For some customs, forced marriage of close relatives is an obligation, to maintain ties of friendship and preserve offspring, even if the child who is to be married does

not want to (interview with Muhammad Idham, Community Gebang Black Water, on August 10th, 2024).

b. Educational factors

It is a very important foundation in a child's life. However, when a child is forced to stop going to school when he is obliged to get a proper education, there are several possibilities for what he will do when this happens. First, he will spend time working so that he will feel able to support himself after earning sufficient income and being successful in the work he is involved in. Second, living a different life from the first, namely not having a job or activities to fill his free time.

Then Mr Azhari said: "Thus, the view of parents is that when their children have dropped out of school, they are worried that they will quickly get married, this will be filled with useless activities and things could even happen that are out of control, such as having a relationship with the opposite sex which, if it crosses the line and is unsupervised, it will result in pregnancies outside of marriage" (interview with Azhari, Black Water Community, on 11th August 2024).

c. Apart from that, there is also the factor of religious understanding.

Mr. Andi Sulaiman (Air Hitam religious figure) stated: "The understanding of religion in society generally explains that if a child has a relationship with the opposite sex before marriage, it is considered contrary to religion, so parents must immediately marry the child as an effort to prevent religious violations. For example, if a child has sex with the opposite sex before marriage, the act is considered a disgraceful act, because it commits "adultery." If this happens, the parents will marry off their children by asking for marriage dispensation in court as a way out."

However, as stated by Ahmad Buyung (Former Black Water Village Head): "when deciding that children under the age of 16 should not be married off, the community still insisted that these children be married off so that it would not become a disease in society and provide a deterrent effect on young people who want to do it. This is evidence of the growing influence of religious understanding in people's lives. Next is pregnancy out of wedlock. As previously explained, pregnancy out of wedlock is often the reason for child marriage. Having an out-of-bounds relationship to the point of daring to have sexual relations and causing pregnancy, encourages the child's parents to marry them off whether the child likes the man who impregnated her or not. In this case, coercive actions are often carried out by parents against their children so that the child can bear and regret the actions they have committed."

From the several descriptions related to the factors in early marriage above, there are also several general impacts, including domestic violence, high divorce rates, increasing

poverty, as well as trafficking/exploitation and commercial sex of children. Then, from the findings above, several factors force the marriage of underage children, including The role of parents is too dominant, forcing children to marry to avoid promiscuity, and economics is a factor for parents to marry their children to reduce the burden on the family, then there is a lack of understanding of existing religious knowledge which results in forced marriages occurring.

Analysis of Islamic Law against Forced Early Marriage in Indonesia

Islam does not set an age limit for marriage. However, in the context of human rights, Islam protects the freedom of every individual, including children and adolescents, to determine his future. Forced early marriage violates the individual's right to give voluntary consent. This is contrary to the concept of harmony in Islam which upholds freedom of worship and choosing one's way of life. In civil terms, children and teenagers are not yet fully mature to bear the duties of marriage. They are still in the stage of learning and understanding themselves. Early marriage can disrupt the physical and psychological growth process.

As a social impact, forced marriage has the potential to increase the divorce rate due to a lack of commitment and a mature family concept. Children are also at risk of bearing household burdens and giving birth prematurely. In line with this, based on the provisions of Article 71 letter f, Compilation of Islamic Law Number 1 of 1991 "underage marriages carried out under force are classified as marriages that may be annulled". Based on these regulations, the power of the position of parents/guardians in marriage is not as intended in the understanding of many societies, which currently operate based on the concept of a patriarchal family (Muslimin & Shulton, 2019). The elements of forced marriage are:

1. There's an action
2. Threats both physical and mental.
3. There is an object for the action
4. The coercive desire to be obeyed
5. There is an element of freedom of action.
6. There are several types of coercion related to the power to carry out forced actions (Umami, 2022).

Then in the same rule, it is emphasized, namely the Compilation of Islamic Law, it also says that it is permissible to revoke guardianship rights, as stated in Article 109 that "Religious Courts can revoke the guardianship rights of a person or legal entity and transfer them to another party at the request of their relatives if the guardian is a drunkard, gambler, spendthrift, crazy and/or neglecting or abusing his rights and authority as guardian for the benefit of the people under his guardianship." These rules are very clear, that parents/guardians are not allowed to abuse their guardianship rights, revoking guardianship rights is not a general offense but is a complaint offense (Umami, 2022).

In the Compilation of Islamic Law which determines the principles and principles regarding marriage, which are inspirational for the development of the times, as the word of Allah SWT in Surah an-Nahl verse 72:

وَاللَّهُ جَعَلَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا مِّنَ الطَّيِّبَاتِ أَقْب

“Allah has made for you a partner (husband or wife) from your kind, made for you from your partner's children and grandchildren, and bestowed upon you good sustenance. Why do they believe in falsehood, while in God's favor they disbelieve? (An-Nahl/16:72) (Department of Religion, 2016).”

Among the principles and principles regarding marriage are: the principles of Voluntariness, Consent, Freedom, Husband and Wife Partnership, Forever, Permissibility or Mubah, Benefits of Life, Rejecting harm and taking advantage, Legal Certainty, Personality and Islam, and Principles of Open Monogamy (Hasibuan, 2020).

The first opinion states that it is permissible to force a girl to marry, this opinion is conveyed by the majority of scholars. The second opinion states that it is not permissible to force a girl to marry but to wait until she is an adult and can be asked for permission to marry. This opinion was conveyed by Ibn Syabramah and Abu Bakr al-Syam. There are quite a few narrations that mention Ibn Syabramah's opinion regarding the permissibility of marriage at an adult age or when ready to have sexual intercourse (Santoso et al., 2022). The opinion of the first group is based on several arguments, namely, the Qur'an, Surah Al-Thalaq verse 4 which reads:

وَالَّذِي يَبَسِّنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنْ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةَ أَشْهُرٍ وَالَّذِي لَمْ يَحِضْنَ وَأُولُو الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مِنْ أَمْرِهِ يُسْرًا ۚ (الطلاق/65: 4)

“Women who cannot menstruate again (menopausal) among your wives, if you are in doubt (about the period of iddah) then the iddah is three months. Likewise (also) for women who do not menstruate (not yet mature). As for pregnant women, their iddah period is until they give birth. Whoever fears Allah, surely, He will make things easy for him in his affairs (At-Talaq/65:4). (Department of Religion, 2011).”

According to them, this verse explains that the iddah of little girls is three months. And there is no iddah except after divorce or divorce in a marriage, which shows that the little woman was married and then divorced. As a small child, of course, he had no thoughts or desires to get married, so his guardian was the one who arranged his marriage even without his permission (Rahyu & Muzhaffar, 2022).

The evidence from the hadith "from Aisyah ra., she said, 'Rasulullah Saw. married me when I was 6 years old, and he lived with me when I was 9 years old.'" (HR. Muslim). This hadith states that Aisyah ra. Married when he was still small. Because he was still small, and of course had no thoughts of getting married, his father was the one who arranged his marriage without his permission (Sari, 2021).

Meanwhile, the opinion of the second group is based on several propositions, namely in the Al-Qur'an, Surah An-Nisa verse 6 which reads: "And test the orphans until they are old enough to marry. "So if in your opinion they are intelligent/competent (good at looking after wealth), then hand over their wealth to them" (QS An-Nisa: 6) (Department of Religion, 2011).

This verse shows that Allah SWT. Order people who are entrusted with looking after orphans to give orphans their rights once they are old enough and have the skills to be fit for marriage. *Baligh* (mature) and *rusyd* (competent) are emphasized in this verse, and marriage is only permissible after these two things exist in a person (Adityo, 2020).

In the fatwa of the Indonesian Women's Ulema Congress (Fatwa KUPI), it is stated that coercion according to the KBBI comes from the word "*paksa*" which means doing something that is required even if you don't want to. "Forcing" means treating, ordering, or asking forcibly to act with violence (pushing, pressing). Forced marriage in Islamic law must be distinguished from the right of *ijbar* to the guardian. The right of *ijbar* is often understood by many people as the right of a father to impose his wishes for marriage on his daughter. Even though the right of consent is an action based on the father's responsibility to bring

about the best for his daughter, it is not an act of coercion. Because the right of *ijbar* is a matter of responsibility, there are conditions for exercising this right. The condition is that there is no hatred and hostility from the woman, either towards her father or the prospective groom offered by her father; her future husband is commensurate with her (*sekufu'*) the dowry given to her is also commensurate (*mitsli* dowry); and there is no suspicion that the prospective groom will do something that will hurt his wife later (Ilya, 2022).

The majority of ulama think that it is not permissible for a guardian to force his young daughter to marry using QS An-Nisa: 6. Second, the difference in responding to the marriage of the Prophet Muhammad and Aisyah ra. A group of ulama who view the law as the origin of all the behavior of the Prophet Muhammad. It is the Sharia law for the ummah in general that says that it is permissible to marry off little girls by following the Sunnah of the Prophet Muhammad. Who married Aisyah ra. At that time he was still small. There is a group of scholars who consider the marriage of the Prophet Muhammad. With Aisyah ra. As a matter of particularity for him, he said that it was not permissible to marry off young girls. Third, differences in determining the benefits related to the marriage of young girls. The group of ulama say that marrying a little girl to a man who is *kufu'* (capable) has benefits, they consider it permissible to force little girls to marry. Meanwhile, there is a group of ulama who say that marrying off little girls does not bring any benefit at all, it even becomes a shackle for the child's freedom so that her future is threatened, so they believe that forcing little girls to marry is not permissible.

CONCLUSION

Based on the long description above, in my opinion, the author draws the following conclusions: Coercive acts in underage marriages are caused by many factors, especially parental factors, such as economic reasons, low education, and lack of understanding of religion. However, the reasons used by parents in their daughter's marriage remain the same because parents have guardianship rights. Then the majority of ulama or the majority of ulama said that it was haram or not permissible to force a girl (underage) to marry but to wait until she was an adult and her permission to be married could be asked. The majority of

ulama view that forcing minor (underage) girls to marry off does not bring any benefit at all, in fact, it becomes a shackle on the child's freedom so that her future is threatened, therefore they believe that it is not permissible to force underage children to marry.

The author suggests that parents should be wiser in responding to children's issues, children are a mandate and a gift that not everyone necessarily receives from Allah SWT. So, in responding to children, find the best way for the welfare and future of the child so that there will be no regrets in the future. The solution to preventing forced early marriage can also be done by providing an understanding to parents and the community that giving children the freedom to determine choices and enjoy their youth with positive things is very necessary for children because the role of parents is very important for the progress of children's mindset.

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