

QUALITATIVE STUDY REPORT

Stakeholder Perceptions and Support toward the Anti-Sexual Violence Bill and Law No. 16/2019 on Amendments to the Marriage Law



Prepared by:
INFID RESEARCH TEAM

Jakarta, September 2020

QUALITATIVE STUDY REPORT

Stakeholder Perceptions and Support toward the Anti-Sexual Violence Bill and Law No. 16/2019 on Amendments to the Marriage Law

Authors:

Ratna Batara Munti

Ema Mukarramah

Elisabeth Anita Dhewy

Editor:

Farida Indriastuti



First edition, September 2020

CONTENTS

ACRONYMS AND ABBREVIATIONS	iv
FOREWORD	viii
EXECUTIVE SUMMARY	ix
CHAPTER I INTRODUCTION	1
A. Background	1
B. Problem Statement	4
C. Purpose	4
D. Data Collection Method	4
E. Data Processing Method	5
F. Research Report Structure	6
CHAPTER II THEORETICAL APPROACH AND LEGAL BASIS	9
A. Theoretical Approach	9
B. Legal Basis	14
C. Relevant Research	17
CHAPTER III URGENCY OF THE ANTI-SEXUAL VIOLENCE BILL AND REVISED MARRIAGE LAW FOR ACHIEVING GENDER EQUALITY	21
A. Promoting Gender Equality by Ending Violence against Women	21
B. The Role of RUU P-KS and Revised UUP in Promoting Gender Equality	23
CHAPTER IV STAKEHOLDER PERCEPTIONS AND SUPPORT TOWARD RUU P-KS	29
A. Stakeholder Support for RUU P-KS	29
B. Stakeholder Perceptions on the Urgency of RUU P-KS	34
CHAPTER V STAKEHOLDER PERCEPTIONS TOWARD THE SUBSTANCE OF RUU P-KS	47
A. Issues Addressed by RUU P-KS	48
B. Regulating the Crime of Sexual Violence in RUU P-KS	67
C. The Benefits of RUU P-KS	80
CHAPTER VI STAKEHOLDER PERCEPTIONS AND SUPPORT TOWARD THE IMPLEMENTATION OF THE REVISED MARRIAGE LAW	85
A. Expectations, Support and Challenges to the Revised UUP	86
B. Operationalizing the Revised UUP	94
C. Determining Sanctions for the Effective Elimination of Child Marriage	108

References	122
Appendix 1: Research Questions	128
Appendix 2: Research Respondents	131

LIST OF DIAGRAMS AND TABLES

DIAGRAM

Diagram 1. Cases of Adult Sexual Violence Handled by LBH APIK Jakarta in 2019	34
Diagram 2. Type of Sexual Violence Experienced by Sex Workers	40
Diagram 3. Cyber Sexual Violence	42
Diagram 4. Operationalization of the Revised Marriage Law	95

TABLE

Table 1. Perpetuating Factors of Sexual Violence	44
Table 2. Limitations of Existing Legislation in Addressing Different Types of Sexual Violence	56
Table 3. Type and Description of Non-Physical Sexual Harassment	70
Table 4. Sustainable Development Goals Impacted by Child Marriage	87
Table 5. Initiatives for the Prevention and Elimination of Child Marriage	90
Table 6. Interventions for Expanding Access to Education	99
Table 7. Recommended Interventions for Gender Sensitization	104
Table 8. Affirmative Action for Victims of Child Marriage	107
Table 9. Proposed Sanctions and Rationale	112

ACRONYMS AND ABBREVIATIONS

AIPJ2	Australia Indonesia Partnership for Justice
ASEAN	Association of Southeast Asian Nations
BAP	<i>Berita Acara Pemeriksaan</i> / Police Investigation Report
BimWin	<i>Bimbingan Perkawinan</i> / Marriage Counseling
BKKBN	<i>Badan Kependudukan dan Keluarga Berencana Nasional</i> / National Population and Family Planning Agency
BP	<i>Bimbingan Penyuluhan</i> / Counseling and Education
BPfA	Beijing Platform for Action
BPNT	<i>Bantuan Pangan Non Tunai</i> / In-Kind Food Assistance
BPS	Badan Pusat Statistik / National Statistical Office
CATAHU	<i>Catatan Tahunan</i> / Year-End Notes
CCTV	Closed Circuit Television
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CLS	Critical Legal Studies
CSR	Corporate Social Responsibility
COVID-19	Coronavirus Disease of 2019
DKI Jakarta	<i>Daerah Khusus Ibukota Jakarta</i> / Special Capital Region of Jakarta
DNA	Deoxyribo Nucleic Acid
DP	Dating Violence
DPR RI	<i>Dewan Perwakilan Rakyat Republik Indonesia</i> / House of Representatives of the Republic of Indonesia
FGD	Focus Group Discussion
FGM/C	Female Genital Mutilation/Cutting
FH UI	<i>Fakultas Hukum Universitas Indonesia</i> / Faculty of Law of the University of Indonesia
FORHATI	<i>Forum Alumni Himpunan Mahasiswa Islam/HMI Wati</i> / Alumni Forum of Muslim Students/Female Students Association
FPL	<i>Forum Pengada Layanan</i> / Service Provider Forum
GEBER PPA	<i>Gerakan Bersama Pencegahan Perkawinan Anak</i> / Joint Movement Against Child Marriage
GenRe	<i>Generasi Berencana</i>
GGI	Gender Gap Index
HDI	Human Development Index
HIV/AIDS	Human Immunodeficiency Virus/ Acquired Immunodeficiency Syndrome
HR	Human Rights
HWDI	<i>Himpunan Wanita Disabilitas Indonesia</i> / Indonesian Association of Women with Disabilities
ICPD	International Conference for Population & Development
IDI	<i>Ikatan Dokter Indonesia</i> / Indonesian Medical Association
IQ	Intelligence Quotient
ITE	<i>Informasi dan Transaksi Elektronik</i> / Electronic Information and Transactions

JFDG	Jakarta Feminist Discussion Group
JKP3	<i>Jaringan Kerja Program Legislasi Nasional Pro Perempuan / National Pro-Women Legislation Program Network</i>
JR	Judicial Review
KDRT	<i>Kekerasan Dalam Rumah Tangga / Domestic Violence</i>
KIE	<i>Komunikasi, Informasi, Edukasi / Communication, Information, Education</i>
Komnas HAM	<i>Komisi Nasional Hak Asasi Manusia / National Commission on Human Rights</i>
Komnas Perempuan	<i>Komisi Nasional Anti Kekerasan terhadap Perempuan / National Commission on Violence against Women</i>
Kowani	<i>Kongres Wanita Indonesia / Indonesian Women's Congress</i>
KPAI	<i>Komisi Perlindungan Anak Indonesia / Indonesian Commission for Child Protection</i>
KPI	<i>Koalisi Perempuan Indonesia / Indonesian Women's Coalition</i>
KSP	<i>Kantor Staf Presiden / Executive Office of the President of Indonesia</i>
KUA	<i>Kantor Urusan Agama / Office of Religious Affairs</i>
KUHAP	<i>Kitab Undang-Undang Hukum Acara Pidana / Code of Criminal Procedure</i>
KUHP	<i>Kitab Undang Undang Hukum Pidana / Criminal Code</i>
KUPI	<i>Kongres Ulama Perempuan Indonesia / Indonesian Women's Ulama Congress</i>
KWI	<i>Konferensi Waligereja Indonesia / Bishops' Conference of Indonesia</i>
K/L	<i>Kementerian/Lembaga / Government Ministry/Agency</i>
Lakpesdam PBNU	<i>Lembaga Kajian dan Pengembangan Sumberdaya Manusia, Pengurus Besar Nahdlatul Ulama / Institute for Human Resource Studies and Development of NU Executive Board</i>
LBH	<i>Lembaga Bantuan Hukum / Legal Aid Institute</i>
LBH APIK	<i>Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia untuk Keadilan / Legal Aid Institute of Indonesian Women's Association for Justice</i>
LEA	Law Enforcement Agency
LKP3A	<i>Lembaga Konsultasi untuk Pemberdayaan dan Perlindungan Perempuan dan Anak / Consultation Institute on the Empowerment and Protection of Women and Children</i>
LP	<i>Laporan Polisi / Police Report</i>
LPSK	<i>Lembaga Perlindungan Saksi dan Korban / Institute for Witness and Victim Protection</i>
MaPPI FH UI	<i>Masyarakat Pemantau Peradilan Indonesia Fakultas Hukum Universitas Indonesia / Indonesian Judicial Monitoring Society of the Law Faculty of the University of Indonesia</i>
MDGs	Millennium Developments Goals
MK	<i>Mahkamah Konstitusi / Constitutional Court</i>
MLKI	<i>Majelis Luhur Kepercayaan Terhadap Tuhan Yang Maha Esa Indonesia / Indonesian Council of Indigenous Beliefs</i>
MMR	Maternal Mortality Rate
MoCI	Ministry of Communication and Informatics
MoEC	Ministry of Education and Culture
MoH	Ministry of Health
MoHDC	Ministry of Human Development and Culture
MoL	Ministry of Labor
MoNDP	Ministry of National Development Planning

MoPW	Ministry of Public Works
MoRA	Ministry of Religious Affairs
MoWECP	Ministry of Women's Empowerment and Child Protection
MSM	Men who have Sex with Men
MUI	<i>Majelis Ulama Indonesia</i> / Indonesian Ulama Council
NAPZA	<i>Narkotika, Psikotropika dan Zat Adiktif</i> / Narcotics, Psychotropics, and Addictive Substances
NGO	Non-Governmental Organization
NTB	<i>Nusa Tenggara Barat</i> / West Nusa Tenggara
NTT	<i>Nusa Tenggara Timur</i> / East Nusa Tenggara
NU	<i>Nahdlatul Ulama</i> / Revival of the Ulama Movement
OPSI	<i>Organisasi Perubahan Sosial Indonesia</i> / Indonesian Organization for Social Change
P2TP2A	<i>Pusat Pelayanan Terpadu Pemberdayaan Perempuan dan Anak</i> / Integrated Service Center for Women and Child Empowerment
PBI	<i>Penerima Bantuan Iuran</i> / Recipient of Premium Waiver Benefit
Peruati	<i>Persekutuan Wanita Berpendidikan Teologi di Indonesia</i> / Association of Theologically Educated Women in Indonesia
PGI	<i>Persekutuan Gereja-Gereja di Indonesia</i> / Communion of Churches in Indonesia
PIK-R	<i>Pusat Informasi dan Konseling Remaja</i> / Information and Counseling Center for Teenagers
PKBI	<i>Perkumpulan Keluarga Berencana Indonesia</i> / Indonesian Family Planning Association
PKH	<i>Program Keluarga Harapan</i> / Family of Hope Program
PKK	<i>Pemberdayaan Kesejahteraan Keluarga</i> / Family Welfare and Empowerment
PLHIV	People Living with HIV/AIDS
Polda	<i>Kepolisian Daerah</i> / Regional Police
Polda Metro Jaya	<i>Kepolisian Daerah Metropolitan Jakarta Raya</i> / Greater Jakarta Metropolitan Regional Police
Posyandu	<i>Pos Pelayanan Keluarga Berencana - Kesehatan Terpadu</i> / Integrated Family Planning - Healthcare Center
PP Aisyiyah	<i>Pimpinan Pusat Aisyiyah</i> / Aisyiyah Central Board
PP Fatayat NU	<i>Pimpinan Pusat Fatayat Nahdlatul Ulama</i> / Nahdlatul Ulama Fatayat Central Board
PP Muhammadiyah	<i>Pimpinan Pusat Muhammadiyah</i> / Muhammadiyah Central Board
Prolegnas	<i>Program Legislasi Nasional</i> / National Legislation Program
Puskapa UI	<i>Pusat Kajian dan Advokasi Kualitas Hidup Anak Universitas Indonesia</i> / Center for Child Protection and Wellbeing of the University of Indonesia
Puskesmas	<i>Pusat Kesehatan Masyarakat</i> / Local Community Health Center
Puspaga	<i>Pusat Pembelajaran Keluarga</i> / Family Learning Center
RPJMN	<i>Rencana Pembangunan Jangka Menengah Nasional</i> / National Medium-Term Development Plan
RT	<i>Rukun Tetangga</i> / Neighborhood Association
Rumah KitaB	<i>Yayasan Rumah Kita Bersama</i> / Rumah Kita Bersama Foundation
RUU	<i>Rancangan Undang-Undang</i> / Bill
RUU P-KS	<i>Rancangan Undang-undang Penghapusan Kekerasan Seksual</i> / Anti Sexual Violence Bill

SDGs	Sustainable Development Goals
SE	<i>Surat Edaran / Circular</i>
Sekjen	<i>Sekretaris Jenderal / Secretary General</i>
SGRC	Support Group and Resource Center on Sexuality Studies
SMA	<i>Sekolah Menengah Atas / High School</i>
SMK	<i>Sekolah Menengah Kejuruan / Vocational School</i>
SMP	<i>Sekolah Menengah Pertama / Middle School</i>
SP3	<i>Surat Perintah Penghentian Penyidikan / Notice of Termination of Investigation</i>
SPHPN	<i>Survei Pengalaman Hidup Perempuan Nasional / National Survey on Women's Life Experiences</i>
SRHR	Sexual and Reproductive Health and Rights
STIs	Sexually-Transmitted Infections
Stranas PPA	<i>Strategi Nasional Pencegahan dan Perkawinan Anak / National Strategy on the Prevention of Child Marriage</i>
Sulbar	<i>Sulawesi Barat / West Sulawesi</i>
Sulteng	<i>Sulawesi Tengah / Central Sulawesi</i>
Suscatin	<i>Kursus Calon Pengantin / Pre-Marriage Course</i>
TKP	<i>Tempat Kejadian Perkara / Crime Scene</i>
UDHR	Universal Declaration of Human Rights
UI	<i>Universitas Indonesia / University of Indonesia</i>
UN	United Nations
UNICEF	United Nations Children's Fund
UPPA	<i>Unit Pelayanan Perempuan dan Anak / Women and Children's Service Unit</i>
UPTD	<i>Unit Pelaksana Teknis Daerah / Local Technical Implementation Unit</i>
UT	Urine Test
UU	<i>Undang-Undang / Law</i>
UUD	<i>Undang-Undang Dasar / Constitution</i>
UU ITE	<i>Undang-Undang Informasi dan Transaksi Elektronik / Law on Electronic Information and Transactions</i>
UU PKDRT	<i>Undang-Undang Penghapusan Kekerasan dalam Rumah Tangga / Law on the Elimination of Domestic Violence</i>
UU PTPPO	<i>Undang-Undang Pemberantasan Tindak Pidana Perdagangan Orang / Law on the Eradication of the Crime of Trafficking in Persons</i>
UUP	<i>Undang-Undang Perkawinan / Law on Marriage</i>
VCS	Video Call Sex
VeR	<i>Visum et Repertum / Medicolegal report</i>
WBI	<i>Wanita Buddhis Indonesia / Indonesian Buddhist Women</i>
WVI	Wahana Visi Indonesia
YKP	<i>Yayasan Kesehatan Perempuan / Women's Health Foundation</i>

FOREWORD

The International NGO Forum on Indonesian Development (INFID) is committed and has the mandate to reduce gender inequality in Indonesia's various development issues. One of the reasons for INFID to contribute to this issue is the concern over the high number of cases of sexual violence and the high rate of child marriage in Indonesia.

Currently, INFID considers it necessary to provide support to victims of sexual violence and efforts to prevent child marriage through a qualitative study on "Stakeholders' Perceptions and Support of the Anti Sexual Violence Bill (RUU P-KS) and Law No. 16 of 2019 concerning Amendments to the Marriage Law". We work together with researchers who have consistently strived to advance gender equality and encourage the birth of various policies that favor women.

Like the RUU P-KS, which faced various challenges in the legislative process, this qualitative study also faced challenges when the COVID-19 pandemic hit the world, including Indonesia. The main challenge faced was the delay in the previously planned schedule. Concerns about the spread of the virus in the early days of the pandemic also caused respondents to limit themselves to being interviewed.

Despite various obstacles, finally, this qualitative study report book has been completed. This book presents various views of stakeholders on the urgency of the RUU P-KS, which provides protection and recovery efforts for victims of sexual violence. This research report book also contains about how to encourage the realization of child marriage prevention in Indonesia.

We recognize that this study still has some flaws. We hope that the results of this study can provide enrichment for previous studies on support for the RUU P-KS and can strengthen advocacy to push for its ratification. Finally, we would like to thank those who have contributed to the birth of this book.

Jakarta, 1 September 2020

Tatat

Program Manager at INFID

EXECUTIVE SUMMARY

This research takes a descriptive approach to capture stakeholders' positive support toward the Anti-Sexual Violence Bill (RUU P-KS), and the operationalization of Law No. 16/1974 on Amendments to Law No. 1/1974 on Marriage (revised UUP), as well as the significance of both pieces of legislation on achieving gender equality in Indonesia. RUU P-KS and the revised UUP were chosen as the subject matter of this research as both are associated with efforts to end sexual violence against women, and can contribute towards eliminating gender inequalities, as part of the Sustainable Development Goals (SDGs).

Data were collected through FGDs and interviews with a sample size of 106 respondents representing government institutions, and civil society organizations, as well as different professions and age groups. In addition, a document analysis was also conducted to enrich the available research data and information. Focused group discussions (FGDs) were held with 38 stakeholders representing public service providers, youth groups, religious and *penghayat kepercayaan* (adherents of indigenous beliefs) organizations, NGOs, and journalists, as well as the Women and Children's Protection Unit (UPPA) under the DKI Jakarta Metropolitan Regional Police. In depth interviews were conducted with 69 respondents from DKI Jakarta and other regions, such as Aceh, Padang, Tangerang, Cirebon, Yogyakarta, Malang, Situbondo, Banjarmasin, Makassar, NTB dan NTT.

The study observed three key perceptions on the significance of RUU P-KS and the revised UUP on gender equality. First, both legal instruments are seen to contribute directly towards achieving gender equality. Second, they are considered to contribute indirectly towards creating gender equality as there are other determinants accelerating progress towards gender equality. Third, the RUU P-KS does not automatically contribute to promoting gender equality.

These perceptions essentially reflect the revised UUP's contribution to achieving gender equality, whether directly or indirectly. There are however different perceptions on the correlation between the RUU P-KS and gender equality. The Anti-Sexual Violence Bill is also perceived to both directly and indirectly contribute to gender equality, but it is also considered to not necessarily be relevant to achieving gender equality.

Public service providers, youth groups, survivor groups and their families in general strongly supported the RUU P-KS, which was demonstrated through action. Meanwhile, religious and *penghayat kepercayaan* organizations, religious leaders, and civil society organizations were either at the commitment or action phase.

The support from public service providers is underpinned by the urgency for legal reform in order to surmount the obstacles to effectively handle cases of sexual violence. The

challenges include the unaligned perspectives of law enforcement agencies (legal culture) that meant lack of cohesiveness and synergy in terms of case handling and service delivery (legal structure). Indonesia's weak legal mechanisms also allow loopholes due to a shaky legal foundation and gaping regulatory void on sexual violence, including in dealing with the resulting trauma (legal substance).

For religious and *penghayat kepercayaan* organizations, support for the Anti-Sexual Violence Bill is based on the universal principle embodied in every religion and belief where sexual violence is considered an unconscionable act. Other than the problems in the legal system, survivors and their families also have to cope with severe psychological stress as a result of the traumatic event of sexual violence, which has a crippling impact on every aspect of their lives, be it physical, economic, or social, including in regard to their sexual relations. This traumatizing experience destroys the lives of the victims and their families.

Apart from the implied expectations for change and improvement, the support for RUU P-KS is also shown through feedback on improving the bill. Support came in the form of awareness-raising and information dissemination on the urgency of the bill, and building advocacy networks.

Perceptions on the urgency of RUU P-KS are based on the following rationale: 1) Behind every case of sexual violence is a victim in dire need of help; 2) Cases of sexual violence are only the tip of the iceberg; 3) Sexual violence is a systematic phenomenon; 4) The devastating impacts of sexual violence that ruin the lives of victims and their families; 5) Sexual violence in the private sphere negates the protection expected from those closest to the victims; 6) Vulnerability to sexual violence for certain groups; 7) The locus of sexual violence has expanded from offline to online; 8) Discriminatory power relations and gender constructs are the root causes of sexual violence; 9) No concrete government action to address the root causes of sexual violence, and lack of education on sexual and reproductive health and rights (SRHR), which perpetuates sexual violence.

The issue of legal culture, which many expect can be resolved through the RUU P-KS, concerns the legal system and how it responds to cases of sexual violence. It also relates to the element of sexual consent, victim precipitation, use of the victim's sexual history as evidence, the perspectives of victim services officers, and public understanding of sexual violence. Meanwhile, issues relating to the substance of the law include lack of material sources of law addressing sexual violence, legal dualism that is disadvantageous to the victim, lack of access to safe abortion and the need to reduce maternal mortality rates, and weak formal sources of law for protecting the victim.

The barriers to formal sources of law cover three aspects that the bill can help address. First, the obstacles to the effective handling of sexual violence cases. Second, a single witness is considered insufficient. Third, the indecisive role of psychologists in giving evidence on

cases of sexual violence.

The Anti-Sexual Violence Bill also touches on several issues relating to the legal structure. First, poor coordination and synergy between services. Second, no updates on cases handled by law enforcement agencies. Third, the importance of optimizing support for the victim's recovery. Fourth, the need for budgetary support for legal aid and victim recovery.

In terms of having regulations in place for the different types of sexual violence, the bill is crucial for addressing the many forms of violations committed against the rights of women and other vulnerable groups. To this end, improvements to the formulation of the criminal elements in the nine types of sexual violence, including non-physical sexual harassment, were proposed. The bill has elicited contentious debate, among others on whether sexual violence needs to be regulated as a criminal offense or not due to concerns of overcriminalization. Another sticking point relates to the appropriate punishment for non-physical sexual harassment, such as catcalling.

Inputs on how best to regulate the criminal act of coercion, and prostitution, essentially have the same purpose of providing sex workers, as a vulnerable group, the necessary protection. Punishment should instead be directed at the clients and pimps.

With regard to defining the crime of forced abortion and contraception, the criminalization of health workers should be avoided, and protection to persons with disabilities should be ensured. The inclusion of the element of informed consent for abortion and contraception was also proposed to create a clear line between criminal and non-criminal conduct. This is necessary considering that the Health Law provides an exception for abortion in cases of rape, or the presence of medical indications. This provision however should also provide protection to all types of sexual violence that lead to unwanted pregnancies.

Furthermore, it was also proposed that the practice of *kawin tangkap* (marriage by abduction), which is detrimental to women and girls, be covered in legislation. This is important as the existing draft law only targets parents who have forced their daughters into marriage, or the person officiating the marriage.

Another input on the bill concerns the need to establish a clear distinction between sexual exploitation and other forms of sexual violence. The spotlight was particularly shone on the crime of sexual exploitation as it was only given the briefest explanation compared to other forms of sexual violence. An element of the crime is the presence of some form of benefit or barter between the perpetrator and victim who are of unequal power. Another recommendation is to improve provisions on the crime of sexual torture as the norms set forth in the RUU P-KS drafted by the Indonesian National House of Representatives (DPR RI) in 2017 are to a considerable degree different than the norms established by the Convention against Torture.

The study also identified the need to include other forms of criminal offenses, specifically on practices that are harmful to sexual and reproductive health, which include female genital mutilation or cutting (FGM/C), the *sifon* tradition, and child marriage. In addition, the RUU P-KS is expected to address an emerging locus for sexual violence—cyber sexual violence—which has yet to be covered by existing legislation.

If the bill is passed, both men and women, and the wider public will benefit immensely. Sexual violence does not discriminate—it can happen to anyone, anywhere, at any time—as long as the causal and perpetuating factors of sexual violence still exist.

Raising the legal age of marriage through the revised Marriage Law (UUP) is considered a progressive move, which reflects the spirit and commitment to end child marriage in Indonesia. However, such legal reform does not necessarily mean lower rates of child marriage as additional responses and the right interventions are needed to meet expectations placed on the revised law.

The positive responses to the revised UUP are reflected in the expectations placed on the law. The three major expectations are: 1) removes the negative impacts of child marriage; 2) protects women's sexual and reproductive health and rights; and 3) reduces gender inequalities.

In order to effectively address gender inequality, increasing the minimum age of marriage provides the legal basis for preventing child marriage. Nevertheless, the revised UUP should not be the only instrument to help reduce gender inequality. Many other effective measures are needed to narrow the gender gap in various fields. The revised UUP can significantly contribute to reducing gender inequality when prevention involves different types of interventions, which may include strengthening the gender perspective for a more just and equal society, and education on sexual and reproductive health and rights (SRHR) from early childhood at all levels of education.

To meet the expectations placed on the revised UUP, four key measures are necessary, which should then be translated into ten interventions. Nine of the interventions concern prevention, and one on response. All of the identified interventions will contribute to realizing the three expectations placed on the revised UUP, which in turn will lead to effective response and prevention. This requires two principal approaches: 1) multi-actor synergies and cooperation; and 2) supervision.

Meanwhile, the ongoing debate on whether sanctions against child marriage are necessary signifies the urgency of awareness-raising interventions, especially when the effectiveness of existing sanctions is taken into account. Punitive measures are considered to be ineffective in tackling the root causes of child marriage, such as poverty, education, and gender-biased

socio-cultural constructions, and do not contribute to the realization of the three expectations placed on the revised UUP.

Based on the aforementioned explanations, the following recommendations are put forward: 1) To fast track the discussion and passage of the RUU P-KS by engaging with the relevant stakeholders; 2) To improve services for victim recovery through a one-stop crisis center; 3) The state should seriously address sexual violence and child marriage, including in terms of the prevention measures, in a comprehensive and holistic manner, by focusing on interventions that address the root causes of the problem with a view to reducing the prevalence of sexual violence and child marriage; 4) To harmonize policies at the national and subnational level in order to effectively end child marriage and sexual violence; 5) To not wait any longer in building awareness on sexual and reproductive health and rights (SRHR) in a comprehensive manner through education at all levels; 6) To initiate affirmative actions and collect data for more effective handling of cases in order to provide the proper assistance to female victims of violence, including child marriage; 7) To prioritize prevention and responses to sexual violence and child marriage; and 8) To optimize the government's role in strengthening cooperation with other stakeholders.



CHAPTER I

INTRODUCTION

A. Background

Sexual violence and child marriage are the manifestation of gender inequality that exists in society. Sexual violence occurs mainly as a result of unequal power relations or power imbalance between the victim and perpetrator. Similarly in child marriage, the child bride occupies a subordinate position, making it hard to escape the gender inequality trap due to the denial of access to education, healthcare, and decent work.

Gender equality remains an elusive goal in many parts of the world. The struggle for gender equality has been longstanding and ongoing. The adoption of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979 was a watershed moment for the global recognition of the importance of gender equality.

Five years later, Indonesia became a State Party to the CEDAW, and is bound by it through Law No. 7/1984 on the Elimination of All Forms of Discrimination against Women. Despite having ratified the CEDAW since 1984 with the relevant government policies in place, various forms of discrimination against women continue to take place.

In 2015, the new global Sustainable Development Goals (SDGs) were agreed upon by all UN member countries, including Indonesia. The SDGs are guided by the



fundamental principle of “leaving no one behind” that is key to the achievement of the 17 goals and 169 indicators. Gender equality is the fifth goal, and a cross-cutting issue that intersects with 16 other development goals. The importance of gender equality in the SDGs is noted in a McKinsey study that highlighted the immense potential of Indonesian women, which if harnessed can add US\$113 billion to the GDP by 2025.¹ Indonesia currently has the world’s largest working-age population, most of whom are women. This means that the country’s development resource potential lies in women.

Meanwhile, based on the National Survey on Women’s Life Experiences (SPHPN) in 2016, the situation for Indonesian women is not all rosy.² This is indicated in the following facts. First, one in three women aged 15 – 64 have experienced physical and (or) sexual violence by a partner or non-partner in some point of their lives. Second, one in four women aged 15 – 64 have experienced physical and (or) sexual violence by a non-partner. Third, two in eleven women aged 15 – 64 have experienced physical and (or) sexual violence by a partner. Based on these figures, it is evidenced that a larger proportion of perpetrators of physical and (or) sexual violence are the victim’s partner.

Other factual truths on the prevalence of violence were also highlighted by the National Commission on Violence against Women (Komnas Perempuan). Komnas Perempuan presented data on the cases of violence against women and children in 2018³. First, incidents of violence in the private sphere or domestic abuse reached 9,637 cases, or about 71 percent of all cases of violence against women and children. Cases of physical violence accounted for 41 percent, followed by sexual violence at 31 percent of all cases of violence within the domestic sphere, psychological abuse at 17 percent, and lastly economic violence, including neglect, at 11 percent. Second, if these different forms of violence are linked to the victim-perpetrator relationship, the following statistics are generated: 53 percent of cases of domestic violence are perpetrated by the husband against the wife, followed by dating violence at 21 percent, and violence against girls at 14 percent. Komnas Perempuan also made a note of the upward trend in violence against girls.

From 2017 to 2019, Komnas Perempuan recorded 17,940 incidents of sexual violence, which accounted for 42 percent of cases of violence against women that reached a total of 40,849 cases. When the number of sexual violence cases is divided by 3 (according to the number of years), this would mean that an average of 5,980 incidents of sexual violence occur every year.⁴

1 “Riset: Kesenjangan Gender Tambah PDB Indonesia US\$135 Miliar di 2025,” Katadata.co.id, 30 April 2019, <https://katadata.co.id/berita/2019/04/30/riset-kesetaraan-gender-tambah-pdb-indonesia-us-135-miliar-di-2025>, accessed 19 June 2020, at 09.05 Indonesian time.

2 “Prevalensi Kekerasan terhadap Perempuan di Indonesia, Hasil SPHPN 2016,” Berita Resmi Statistik No. 29/03/Th.XX, 30 March 2017.

3 Komnas Perempuan, Korban Bersuara, Data Bicara Sahkan RUU P-KS sebagai Wujud Kotrimen Negara, Catatan Kekerasan terhadap Perempuan Tahun 2018, 6 March 2019, (Jakarta: Komnas Perempuan, 2019), p. 1.

4 Forum Pengada Layanan, Lembar Fakta Kekerasan Seksual dalam Angka: 1, Kekerasan Seksual dalam Cegah 2017-2019, (Jakarta: Forum Pengada Layanan, 2019), unpublished.

Indonesia also continues to grapple with an alarming rate of child marriage. According to the Ministry of Women's Empowerment and Child Protection (MoWECP), Indonesia has the seventh highest number of child marriages in the world, and the second in ASEAN. The harmful practice of child marriage is highly detrimental to sexual and reproductive health, especially for girls, and leads to many other negative consequences, such as hampering a child's growth and development.

The high rate of sexual violence against women and girls, including child marriage, needs to be urgently addressed to make sure that Indonesia meets the Sustainable Development Goals. An existing modality, the revised UUP, can help curb the number of child marriages, and thereby allowing girls to liberate themselves from the shackles of inequality.

Apart from the revised Marriage Law, Indonesia is in dire need of a legal framework, such as the RUU P-KS, in order to provide protection and justice to victims of sexual violence, which is a manifestation of gender inequality. The high prevalence of sexual violence calls for government intervention and commitment to prevent and address the issue in a comprehensive manner. In addition, the RUU P-KS addresses forced marriage, acknowledging it as a form of sexual violence. A closer look should be given to the link between the need to regulate the crime of forced marriage through the RUU P-KS and efforts to eliminate child marriage, which is essentially forced marriage.

The RUU P-KS was in fact initiated by the Indonesian House of Representatives (DPR RI) in April 2017. However, discussions on the bill were never finalized, not even when the DPR RI's term of office for 2015-2019 ended. The bill was eventually resubmitted to DPR RI's Legislation Committee and tabled for discussion under the list of priority bills (Prolegnas Prioritas) in 2020. At the time this report was written, the bill was once again a much talked-about issue following its removal from the Prolegnas Prioritas 2020.

In view of the explanations above, in order to achieve the expected development goals and to build a convincing case for the protection of women and children, this research was therefore deemed necessary. INFID has taken the initiative to launch a qualitative research on "Stakeholder Perceptions and Support toward the Anti-Sexual Violence Bill and Law No. 16/2019 on Amendments to the Law on Marriage."

B. Problem Statement

The problem statement of the research is broken down into the following questions:

1. How are the RUU P-KS and the revised UUP correlated to efforts aimed at eliminating gender inequality?
2. What are the perceptions and level of support of stakeholders toward the RUU P-KS and revised UUP?
3. What are the issues and challenges that can be resolved through the RUU P-KS?
4. How effective is the revised UUP in eliminating child marriage in Indonesia?

C. Purpose

1. To present information on the correlation between the RUU P-KS and revised UUP with efforts to eliminate gender inequality.
2. To obtain data and information on the urgency and level of support of 100 stakeholders toward the RUU P-KS and the implementation of the revised UUP.
3. To provide qualitative and positive evidence on the urgency of a Law on the Elimination of Sexual Violence as an umbrella law in an effort to prevent and end sexual violence in Indonesia, and to implement the revised Marriage Law.

D. Data Collection Method

A total of 106 respondents were involved in this research. Respondents came from diverse backgrounds, of different gender and age groups, including survivors, public service providers, academics, journalists, NGOs, women leaders, youths, artists, legal practitioners, religious leaders, religious and *penghayat kepercayaan* organizations, businesses, political parties, members of parliamentary Commission VIII for 2014-2019, as well as government ministries and agencies, such as MoWECP, Coordinating Ministry of Human Development and Culture (MoHDC), Executive Office of the President of Indonesia (KSP), Ministry of Religious Affairs (MoRA), and national human rights institutions Komnas Perempuan, Komnas HAM, KPAI, and LPSK.

Twenty respondents were interviewed on a single subject matter (RUU P-KS). They represented the survivors of sexual violence, law enforcement agencies (LEAs), Women and Children's Protection Units, state bodies dealing with women and children's issues (KPAI, LPSK, and KSP), public service providers (LBH APIK NTT), Muslim and Female Students Alumni Association Forum (FORHATI), and artists. In addition, five respondents were only interviewed on the subject matter of the revised UUP. They were from government ministries and agencies (MoRA, MoWECP, and KPAI). The remaining respondents were interviewed on both subject matters.

The study adopts a qualitative approach that applies the following data collection methods:

1. Focus Group Discussion (FGD)

FGDs were held 5 times from February to March 2020. The discussions involved 38 respondents from various groups, including service providers, survivors, youth groups, religious and *penghayat kepercayaan* organizations, activists, journalists, and Women and Children's Protection Units in four regions under DKI Jakarta, and under the Greater Jakarta Metropolitan Police.

2. In-Depth Interview

In-depth interviews were conducted with 69 respondents⁵ from February 20 to April 30, 2020. In-person interviews took place until the end of March, whereas phone, online, and written interviews were conducted since mid-March 2020. This mix of interview formats was necessary in view of the COVID-19 pandemic where social distancing rules were imposed. Phone interviews were also conducted with respondents from outside Jakarta (Aceh, Padang, Banjarmasin, Cirebon, Situbondo, Tangerang, Yogyakarta, Malang, Makassar, NTB and NTT).

3. Secondary Data

The research team complemented primary data with secondary data drawn from relevant sources of reference, including laws and regulations, books, and articles. Various pieces of legislation were studied, such as KUHP (Criminal Code), RUU KUHP (Bill on the Criminal Code), Law No. 23/2002 on Child Protection as amended through Law No. 35/2014, Law No. 26/2000 on Human Rights Tribunals, Law No. 21/2007 on Eradication of the Crime of Trafficking in Persons, Law No. 23/2004 on the Elimination of Domestic Violence, Presidential Regulation No. 59/2017 on the Implementation and Achievement of the Sustainable Development Goals, and Presidential Regulation No. 18/2020 on the National Medium-Term Development Plan (RPJMN) for 2020 - 2024.

E. Data Processing Method

Data were processed through the following methods and stages:

Stage 1. Data selection where only pertinent data will be used from all data collected. It involves a coding process where codes (words or phrases) are assigned to data segments, which are essential to the data segments. The series of codes are determined according to the research questions and problem statement, which are developed through the coding process. This process uses the Dedoose application for data processing. The entire process generated 2,557 excerpts (data segments) across 217 codes.

Stage 2. Code summarization for each code, which will be the basis for preparing the data to be analyzed.

⁵ A respondent who participated in an FGD was also later interviewed. As such, although 69 people were interviewed and 38 took part in FGDs, the total number of respondents was still 106.

Stage 3. Data analysis of issues and topic areas that emerge from the responses given by respondents, of trends or patterns from study findings related to perspectives and perceptions on the RUU P-KS and revised UUP, and to draw conclusions that are linked to the problem statement and research questions.

F. Research Report Structure

This report is structured around seven chapters. Chapter I provides the research background and purpose, problem statement, as well as data collection and processing methods. Chapter II contains the theoretical and conceptual frameworks, and the legal grounds for the research. Chapter III discusses the urgency of the RUU P-KS and revised UUP towards achieving gender equality. Chapter IV presents the research findings regarding stakeholder support, and their perceptions on the urgency of the RUU P-KS.

Chapter V explains in further detail the support shown by stakeholders toward improving the RUU P-KS, specifically on norms that should be formulated in order to address long-standing issues in responding to sexual violence.

Chapter VI describes stakeholder support for the revised UUP as reflected through the three major expectations placed on this legal instrument, and the interventions that need to be undertaken in terms of prevention and response, as well as the effectiveness of sanctions in eliminating child marriage. Chapter VII puts forward the conclusions and recommendations based on the research results.



CHAPTER II

THEORETICAL APPROACH AND LEGAL BASIS

A. Theoretical Approach

1. Feminist Legal Theory

The feminist legal theory, also known as feminist jurisprudence, is an oft-used theory in legal and social studies, especially on issues related to violence against women, gender, and law.⁶ It is built on the experiences of women, and from critical perspectives developed within other disciplines. It offers critical analyses of the relationship between law and gender, as well as new understandings on the limits of, and the opportunities for legal reform.⁷

The idea for the feminist legal theory arose from a fundamental assumption on the relationship between women and law. In practice, laws are formulated for further entrenching patriarchal social relations. Such relations are rooted in masculine norms, experiences, and power, while women's experiences are dismissed. The law is considered to be a contributing factor to the oppression of women as it is constructed according to masculine values and perspectives.⁸

⁶ See <https://scholar.google.com>

⁷ Katharine T. Barlett & Rosanne Kennedy (Ed.), *Feminist Legal Theory: Readings in Law and Gender*, (USA: Westview Press Inc., 1991), p. 1.

⁸ Sulistyowati Irianto, "Teori Hukum Feminis," in Sulistyowati Irianto (Ed.), *Hukum Perlindungan Perempuan dan Anak*, (Jakarta: USAID & E2J The Asia Foundation, 2015), p. 1.



The three basic characteristics of feminist legal theory are that it challenges the assumption of the neutrality and objectivity of law, and how law in terms of formulation and practice impacts on women. Also, that it develops the ability to question the extent to which the law discriminates or disqualifies against women, and how existing laws and practices can address women's issues. Are both aspects adequate enough? If not, what are the impacts? How do the laws and practices discriminate against women in respect to the legal substance, structure, and culture? Do they apply gender assumptions? And so on. The theory went further, and found a way to use law for elevating women's position in society through the reinterpretation of law or legal reform.⁹

The feminist legal theory can help analyze the extent to which the legal system—substance, structure, and culture of existing laws—has responded to the issue of sexual violence and child marriage in Indonesia. It also shows how revising laws on sexual violence and child marriage is crucial for improving the lives of women, fulfilling their rights, and promoting a more equal and just society, especially in respect to the power relations between men and women.

2. Gender-Based Violence

Sexual violence and child marriage can essentially be subsumed within the broader context of gender-based violence, which is defined as violence that is directed specifically against a woman, simply because she is a woman, or that affects women disproportionately. It includes acts that inflict physical, mental, and sexual harm or suffering, or threats of such acts, or violence or coercion, and deprivations of liberty.¹⁰

Gender ideology as a social construction leads to the perpetuation of myths, differentiation, or discrimination against women. Women are seen as inferior, weak, and different, as mere companions, objects, and property, who have no right to self-determination, and exist simply for serving men.¹¹ In this context, women are not only seen in terms of their sex, but also gender identity.

As a logical consequence of perceptions and beliefs that are anchored in such gender assumptions, women are therefore more vulnerable to violence than men. These perception and beliefs also shape societal structures and systems, including the legal system.¹²

Gender-based violence constitutes a violation of the rights of women that renders them incapable of fully enjoying their civil, political, economic, social, and cultural rights. It reflects and reaffirms the inequalities between men and women. It puts women's health in grave

9 Nursyahbani Katjasungkana "Feminist Legal Theory" in Modul Pelatihan Bantuan Hukum Gender Struktural, (LBH APIK Jakarta, 1995).

10 See General Recommendation No. 19 on Violence against Women, UN Committee on the Elimination of All Forms of Discrimination against Women, for original document see General Recommendation No. 19, Violence against Women, eleventh session, 1992, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

11 E. Kristi Poerwandari, Penguatan Psikologis Untuk Menanggulangi Kekerasan Dalam Rumah Tangga dan Kekerasan Seksual: Panduan Dalam Bentuk Tanya Jawab, (Jakarta: Program Kajian Wanita Program Pascasarjana Universitas Indonesia, 2006), p. 2-3.

12 Ibid.

danger, including their sexual and reproductive health, and compromises their security and integrity, economic independence and freedom.¹³

3. Rights-Based Approach

A rights-based approach is grounded in the understanding that every individual is a rights-holder, where human rights are inherent to all human beings. Every person without exception is a rights-holder, regardless of ethnic origin, social status, age, gender, race, religion, or other backgrounds, as enshrined in the Universal Declaration of Human Rights (UDHR). Every individual therefore, including women and children, should be afforded with the same opportunity to enjoy their rights as human beings.

Apart from empowering rights-holders to claim their rights, the rights-based approach also drives duty-bearers to meet their obligations.¹⁴ As duty-bearer, the state has the obligation 1) to respect human rights by refraining from interfering except otherwise governed by law; 2) to protect human rights by taking the necessary legislative, administrative, judicial, and practical measures to guarantee the implementation of human rights, and to avoid violations committed by state and non-state actors; and 3) to fulfil human rights by taking positive steps and actions to ensure that every individual can exercise their rights.¹⁵

State obligations arise from being voluntarily bound to international human rights instruments. Indonesia is a state party to several international human rights laws, including CEDAW as ratified through Law No. 7/1984. Pursuant to this law, the state has the obligation to eliminate discrimination against women,¹⁶ including violence against women.¹⁷

In addition, Indonesia is bound to the commitment to implement 12 critical areas of concern outlined in the Beijing Platform for Action (BPfA) as the turning point for achieving gender equality at the global level. Violence against women and girls are two out of the 12 BPfA critical areas of concern that the state needs to pay attention to, and to periodically report on the progress, achievements, and challenges.

To eliminate sexual violence, the state is required to enact the appropriate laws, and other relevant regulations, including the impositions sanctions, where necessary,¹⁸ to make sure that state meets the obligation to respect, protect and fulfil the rights of victims of sexual violence. Meanwhile in the context of child marriage, the ones most responsible for preventing

13 Christine Forster, Vedna Jivan, *Gender Equality Laws: Global Good Practice and A Review of Five Southeast Asian Countries*, (Bangkok: United Nations Development Fund for Women (UNIFEM) East and Southeast Asia Regional Office, 2009), p. 40.

14 The Office of the UN High Commissioner for Human Rights, "Summary Reflection Guide on a Human Rights-Based Approach to Health: Application to sexual and reproductive health, maternal health and under-5 child health" p. 4, https://www.ohchr.org/Documents/Issues/Women/WRGS/Health/RGuide_HealthPolicyMakers.pdf, accessed 1 August 2020.

15 The Office of the UN High Commissioner for Human Rights, "The International Bill of Rights" <https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx>, accessed 1 August 2020.

16 CEDAW Article 2 as ratified through Law No. 7/1984.

17 General Recommendation No. 19 of CEDAW Committee, 1992.

18 Article 2 item (b) of CEDAW as ratified through Law No. 7/1984. The state also has the obligation to enforce laws that protect women's rights on an equal basis with men, and to ensure through competent national tribunals and other public institutions the effective protection of women against any acts of discrimination (Article 2(c) of CEDAW).

it from happening are the parents themselves.¹⁹ A rights-based approach positions the state as duty-bearer in terms of educating and empowering parents in saying no to child marriage.

Through a rights-based approach, human rights norms, standards, and principles can be mainstreamed into development plans, programs, policies, and processes. It involves the adoption of a framework of human rights principles of equality, non-discrimination, participation, indivisibility, and rule of law. The approach also uses the framework of availability, accessibility, acceptability, and quality of facilities and services as part of fulfilling the entitlements of rights-holders in every aspect of life. In terms of children's rights, a rights-based approach requires that the principle of the best interests of the child becomes the primary consideration in the design and implementation of child-related policies.²⁰

4. Substantive Equality

A formal equality approach maintains that equality will exist when the law treats everyone equally. Meanwhile, the difference approach recognizes the biological differences between men and women, and uses this as the underlying rationale for the socially differential treatment of men and women. The protectionist approach on the other hand treats women differently by excluding them from social life.²¹

These approaches all in all will not be enough to achieve genuine equality for women. Gender-neutral laws disregard the many factors that discriminate against women, relegating them to a subordinate position, and this denies women equal treatment before the law.²² The difference and protectionist approaches also consider the biological difference between the sexes as socially inherent.

Substantive equality seeks to overcome the differences, disparities or inequalities, or circumstances that put women at a disadvantageous position. It also aims to create equal access and opportunities for both men and women, and therefore enjoy the same benefits. Furthermore, it contributes to the realization of legal rights, and ensures equal standing and equal treatment before the law.²³

In lawmaking, women-specific experiences should be factored in to make sure that the law serves as an effective instrument to eliminate discrimination against women. The substantive equality approach in lawmaking ensures that the law addresses gender inequality, and thereby brings positive impacts through equal opportunities, access and benefits for women. It calls for a paradigm shift from equal treatment and differential treatment to equality of outcomes.²⁴

19 See Article 26 clause (1) item c of Law No. 23/2002 on Child Protection.

20 The Office of the UN High Commissioner for Human Rights, "Summary Reflection Guide on a Human Rights-Based Approach to Health" Op. Cit.

21 CEDAW South East Asia, "Substantive Equality" <http://cedawsouthasia.org/about-cedaw/core-concepts/>, accessed 1 August 2020.

22 UN Women, "CEDAW" <https://asiapacific.unwomen.org/en/focus-areas/cedaw-human-rights/faq#substantive>, accessed 1 August 2020.

23 Achie Sudiarti Luhulima, "Hak Perempuan dalam Konstitusi Indonesia" in *Perempuan dan Hukum: Menuju Hukum yang Berperspektif Keadilan dan Keadilan*, (Jakarta: Yayasan Obor Indonesia, 2006), p. 84-85.

24 CEDAW South East Asia, Op. Cit.

Substantive equality requires that the real impacts of gender-neutral laws on men and women are taken into consideration. Women's real-life situations should be borne in mind when undertaking the appropriate measures to achieve gender equality. Both de jure and de facto equality must therefore also be guaranteed.

5. Affirmative Action

By virtue of CEDAW Article 4, affirmative action is a temporary special measure aimed at accelerating de facto equality between men and women. An affirmative action may be discontinued when the objectives of equal opportunity and treatment have been achieved.

Affirmative action is also governed in Indonesia's 1945 Constitution. Article 28H clause (2) of the Constitution affirms that every individual is entitled to privileges and special treatment in order to obtain the same opportunities and benefits with a view to achieve equality and justice.

The long-term goal of an affirmative action is essentially to reduce discrimination between groups on the grounds of their race, color, religion, gender, or origin. Affirmative action is also a way to compensate for past discrimination. Marquita Sykes defines affirmative action as *"the set of public policies and initiatives designed to help eliminate past and present discrimination based on race, color, religion, sex, or national origin."*²⁵

Apart from the political realm, affirmative action is also applied in other fields, such as education and labor, as compensation for groups who have long been discriminated against. An example is school admission quotas reserved for students from certain regions. It can also be targeted at persons with disabilities for employee recruitment at public and private institutions.

6. Theory of Legal System

According to Lawrence M. Friedman, a legal system consists of three key components: legal structure, legal substance, and legal culture. A legal system is a complex organism in which the three components interact.²⁶ The effectiveness of law enforcement is contingent on the three components as they mutually influence each other.

Law enforcement relates to how an institution responsible for implementing the law behaves toward the law itself, and how aware the public is of the obligation to obey the law. On one hand, law enforcement is closely linked to the imposition of sanctions. However, the legal culture of a society does not hinge entirely on the fear of sanctions for people to obey the law. An individual's compliance with the law may simply be for personal gain, or for avoiding punishment, penalty, or painful actions.²⁷

25 Hendri Sayuti, "Hakikat Affirmative Action dalam Hukum Indonesia (Ikhtiar Pemberdayaan yang Terpinggirkan)", Jurnal Menara, Vol. 12 No. 1 (January-June 2013): 41.

26 Lawrence M. Friedman, *The Legal System: A Social Science Perspective*, Third Edition (New York: Russel Sage Foundation, 1987), pp. 14-15.

27 *Ibid.*, p. 69.

B. Legal Basis

1. Sexual Violence

Sexual violence is a form of violence that has yet to be adequately regulated in Indonesia's criminal law. The term sexual violence itself is not recognized in the Criminal Code (KUHP). The scope of KUHP is only limited to rape and acts of indecency. Furthermore, in the KUHP, rape and indecency offenses are subsumed under the chapter on crimes against morality, and this obscures the fundamental issue of sexual violence, which is an infringement of a person's right to bodily integrity and self-existence.²⁸

In existing human rights instruments, sexual violence is defined as "an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment or the incapacity of such person or persons to provide genuine consent."²⁹

E. Kristi Poerwandari describes sexual violence as "a physical assault or attempt at injuring the sexual or reproductive organ, or a psychological attack (degrading, humiliating) aimed at the fixation of a sexual subject. Examples are the sexual manipulation of a child (or a person without equal bargaining position), forced sexual intercourse/rape, sexual coercion, sexual sadism, genital mutilation, forced abortion, forced pregnancy, and others."³⁰

Since 2004 the Indonesian legal system recognizes the term sexual violence by virtue of Law No. 23/2004 on the Elimination of Domestic Violence (UU PKDRT). Under the law, sexual violence is described as forced sexual intercourse within the domestic realm that includes marital rape, and forced prostitution, including against anyone living within the household.³¹ The clause interprets the term sexual violence as rape and forced prostitution. This is understandable given the context around which it came about—the absence of legal recognition of wife rape committed by the husband as a criminal offense.³²

Such norm provides limited protection to the wife or others living within the household. Victims who do not fall within the ambit of this provision are therefore not protected by law. In addition, the wife or others living under the same roof are similarly left unprotected from other forms of sexual violence, apart from rape and forced prostitution.

28 Nursyahbani Katjasungkana, *Kasus-Kasus Hukum Kekerasan Terhadap Perempuan: Sebuah Drama Tentang Patriarki dan Dominasi Laki-Laki*, (Jakarta: LBH APIK Jakarta, 2002), p. 9.

29 See Article 7(1) (g) (6) of the Rome Statute of the International Criminal Court.

30 See E. Kristi Poerwandari, *Mengungkap Selubung Kekerasan: Telaah Filsafat Manusia*, (Bandung: Penerbit Yayasan Eja Insani, 2004), pp. 12-13.

31 See Article 8 items (a) and (b) of the Law on Domestic Violence.

32 Ema Mukarramah, "Menggagas Payung Hukum Perlindungan Korban Kekerasan Seksual," in *Jurnal Perempuan* Edisi 89 Vol.21 No.2 (May 2016): 108.

In 2012, Komnas Perempuan identified 15 types of sexual violence based on the documentation of cases of sexual violence in the past 10 years.³³ In 2013, Komnas Perempuan conducted a study to identify legislation that can serve as the basis for penalizing the crime of sexual violence, specifically by examining the following three aspects: 1) Presence of elements necessary for an act to constitute sexual violence; 2) Liable to punishment; 3) Explicit mention of the type of sexual violence.³⁴

From the study, Komnas Perempuan found that only 3 of the 15 types of sexual violence identified have provisions on penalization with several intrinsic limitations.³⁵ KUHP covers rape, whereas the Child Protection Law regulates child sexual exploitation, and Law No. 21/2007 on the Eradication of the Crime of Trafficking in Persons addresses sexual exploitation and trafficking in persons, in which the relevant provisions can be invoked to prosecute offenders of sex trafficking.³⁶

2. Child Marriage

Article 1(5) of Law No. 39/1999 on Human Rights describes a child as “every person aged below 18 (eighteen) and is not married”. This definition suggests that a child who is married can no longer be called a child.

From 1999 to 2002, deliberations over the amendment of the 1945 Constitution identified several clauses on the fulfilment of human rights in the Constitution. The rights of the child are guaranteed in the Constitution, specifically Article 28B clause (2), which stipulates a child’s rights to life, survival, growth and development, and to protection from violence and discrimination.³⁷

This clause is then elaborated further in Law No. 23/2002 on Child Protection. Article 1(1) of the law defines a child as “a person who has not reached the age of 18 (eighteen), including an unborn child.” This can be considered an updated definition of the one provided in the Human Rights Law. The law also explicitly establishes norms that encourage the elimination of child marriage, as specified in Article 26(1) (c) of the Child Protection Law.³⁸

33 See “15 Jenis Kekerasan Seksual terhadap Perempuan”, <https://nasional.tempo.co/read/444813/15-jenis-kekerasan-seksual-terhadap-perempuan/full&view=ok>, accessed 16 May 2020 at 11.12 Indonesian Time. The fifteen types of sexual violence are (1) Rape; (2) Sexual harassment; (3) Sexual exploitation; (4) Sexual torture; (5) Sexual slavery; (6) Intimidation and threat of rape, and attempted rape; (7) Forced prostitution; (8) Forced pregnancy; (9) Forced abortion; (10) Forced marriage; (11) Trafficking of women for sexual purposes; (12) Sexual control, such as enforced dress code and discrimination against women through rules and regulations; (13) Inhumane punishment, and punishment of a sexual nature; (14) Traditional practices of a sexual nature that are harmful to women; (15) Forced sterilization/contraception. See also Komnas Perempuan, 15 Bentuk Kekerasan Seksual: Sebuah Pengenalan, (Jakarta: Komnas Perempuan, n.d.), https://www.komnasperempuan.go.id/file/pdf_file/Modul%20dan%20Pedoman/Kekerasan%20Seksual/15%20BTK%20KEKERASAN%20SEKSUAL.pdf, accessed 16 May 2020 at 11.05 Indonesian Time.

34 Ema Mukarramah, Op. Cit.

35 See Kunthi Tridewiyanti, et al., (Ed.), Mewujudkan Perlindungan Hak-hak Perempuan Korban dalam Kebijakan: Himpunan Kertas Posisi dan Kajian dari Berbagai Kebijakan Tahun 2010-2013, (Jakarta: Komnas Perempuan, 2014), p. 189.

36 Ibid.

37 “Every child has the right to life and survival, growth and development, and to protection from violence and discrimination.”

38 Article 26 clause (1) of the Child Protection Law: “(1) The parents have the obligation and responsibility to: In 2014, the law was amended to Law No. 35/2014, but does not substantively reduce the meaning of the said articles.

The disposition set forth in the said article however cannot be fully enforced. Not only because of the lack of punitive provisions that mete out sanctions if contravened, but also the fact that Article 7 clause (1) of Marriage Law No. 1/1974 in which 16 is the minimum age of marriage for girls remains applicable and unchanged due to a complicated legislative process and lack of political will from the authorities.

Other than having a constitutional foundation and the Child Protection Law in place, Indonesia is also a state party to CEDAW, which provides an international human rights legal basis that binds the state to eliminate child marriage, as provided below:

- a. CEDAW Article 16 urges state parties to take all the required actions, including legislative measures, to establish the minimum age of marriage;³⁹
- b. CEDAW Committee's General Recommendation No. 21 (1994) on Equality in Marriage and Family Relations asserts that setting the minimum age of marriage at below 18 for girls is tantamount to discrimination;⁴⁰
- c. CEDAW Committee's Concluding Observation in which three recommendations, one after the other, reminded Indonesia to revise the Marriage Law, including the need to raise the minimum age of marriage. The concluding observations on Indonesia was issued for the third time at the 52nd session of CEDAW Committee in 2012.⁴¹

The legislative process for the revised UUP in a bid to eliminate child marriage was stalled, but eventually resumed following a decision handed down by the Constitutional Court on 14 December 2018. Based on a judicial review of Article 7 clause (1) of the UUP that was filed for the second time, the Constitutional Court arrived at the following decisions:

- a. Article 7 clause (1) pertaining to the phrase "age 16" is ruled to be in contradiction with the Constitution, and has no legally binding force;
- b. Lawmakers are required to set a new minimum age of marriage within a three-year duration.⁴²

Nine months later, on 16 September 2019, DPR RI and the government approved Law No. 16/2019 on Amendments to Law No. 1/1974 on Marriage (hereinafter referred to as the revised UUP). This marks a new legislative milestone towards eliminating child marriage in Indonesia.

39 CEDAW Article 16(2): "The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory."

40 CEDAW Committee General Recommendation No. 21 (1994): "The Committee considers that the minimum age for marriage should be 18 years for both man and woman. When men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act."

41 Paragraph 48 of the concluding observations gave particular attention to the Marriage Law, including therein the minimum age of marriage for girls. The Committee urges that Indonesia review the Marriage Law within a clear timeframe to revise all provisions relating to family life that discriminate against women, and therefore bringing the law in line with the Convention, including in ensuring that the law sets the minimum age of marriage for girls and boys at 18 years. The Committee also recommends that the state undertake awareness-raising activities across the country on the negative consequences of child marriage for girls with a view to eliminate this practice. See Concluding Observations of the Committee on the Elimination of Discrimination against Women – Indonesia, 52nd session, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-IDN-CO-6-7.pdf>

42 Constitutional Court Decision No. 22/PUU-XV/2017, Section 5. Verdict. If the law remains unchanged even after the specified duration, the Constitutional Court rules that the minimum age for marriage will automatically apply in accordance with the minimum age for marriage laid down in the Child Protection Law. See the Constitutional Court Decision, item 3.17. p. 58.

There are three significant changes to the law. First, the minimum age of marriage is the same for both boys and girls. Second, the court shall be the institution authorized to decide on any petition for marriage dispensation. Third, the court is required to hear the opinions of the prospective bride and groom in a marriage dispensation request.

In November 2019, the Supreme Court issued Regulation No. 5/2019 concerning Guidance on the Hearing of Petitions for Matrimonial Dispensation. The regulation provides guidelines for the judges of the religious court and district court in examining and ruling over marriage dispensation requests.

The government also issued several pieces of legislation to support the implementation of programs and actions aimed at eliminating child marriage, which include the following:

- a. Presidential Regulation No. 59/2017 on the Implementation and Achievement of the Sustainable Development Goals. One of the targets is Goal 5.3. “Eliminating all harmful practices, such as child marriage” as part of Goal 5 on “Achieving gender equality and empowering all women and girls.”
- b. Presidential Regulation No. 18/2020 on the National Medium-Term Development Plan (RPJMN) for 2020-2024. This policy aims to reduce the rate of child marriage from 11.21 percent in 2018 to 8.74 percent by the end of 2024.

C. Relevant Research

Research related to sexual violence in general presents factual data on the issue, and the challenges faced by victims. One of these studies is a survey on sexual harassment in public spaces conducted by Hollaback Jakarta in collaboration with the Jakarta Feminist Discussion Group (JFDG), PerEMPUn, Lentera Sintas Indonesia, and Dear Catcaller Indonesia in 2018.⁴³ Another research carried out in 2016 by Lentera Sintas Indonesia in cooperation with Magdalene.co and Change.org found that 93 percent of victims chose not to report the sexual assault that they have experienced.

Meanwhile, MaPPI of the University of Indonesia’s Faculty of Law (FH UI) conducted research on the consistency of court decisions, and the factors influencing a verdict on cases of violence against women and persons with disabilities, including cases of sexual violence.⁴⁴

⁴³ A survey launched in late 2018 showed that out of 62 thousand respondents across Indonesia, 69% of women reported having had experienced street harassment. Meanwhile, 1 in 10 men have ever been sexually harassed in public spaces. Regarding the time of the incident, 35% of cases occurred in public spaces in daylight, and 21 percent took place at night. The survey also revealed that the victim’s clothing choices were not the cause of sexual violence. At the time of the crime, the victim was either wearing a long skirt, or pants, or long dress, or even a headscarf. The study specifically focuses on sexual harassment in public spaces, and does not provide insights into other types of sexual violence.

⁴⁴ The research showed that a judge will hand down lesser sentences if the offender promises to marry the victim, or if the victim and perpetrator are dating, for example. The victim’s sexual history also provides reason for the judge to impose a lighter sentence as the victim is then perceived in a negative light.

The research revealed the barriers that victims of sexual violence have to deal with.

Earlier studies were also used to support the analysis of first-hand data obtained by the research team on child marriage. Several references presented data on the phenomenon of child marriage, and reviewed the legal instruments for the elimination of child marriage. Several *Jurnal Perempuan* articles published in 2016 discussed the issue of child marriage from different angles, such as the sociological facts, including child agency, impact, traditional practices, policy opportunities, and the actions taken to end child marriage.⁴⁵

The research by BPS, Bappenas, UNICEF and Puskapa UI in early 2020 analyzed the correlation between child marriage and the impact on both men and women in different aspects of life.⁴⁶ It identified the regions and development sectors that need to be prioritized for scaling up efforts geared at ending child marriage once regulatory reforms are finalized.

A UNICEF-AIPJ research in 2019 examined the effectiveness of sanctions in a bid to prevent child marriage. It found that the imposition of sanctions through local regulations is mistakenly targeted at the child, and therefore go against efforts to spare children from child marriage.⁴⁷

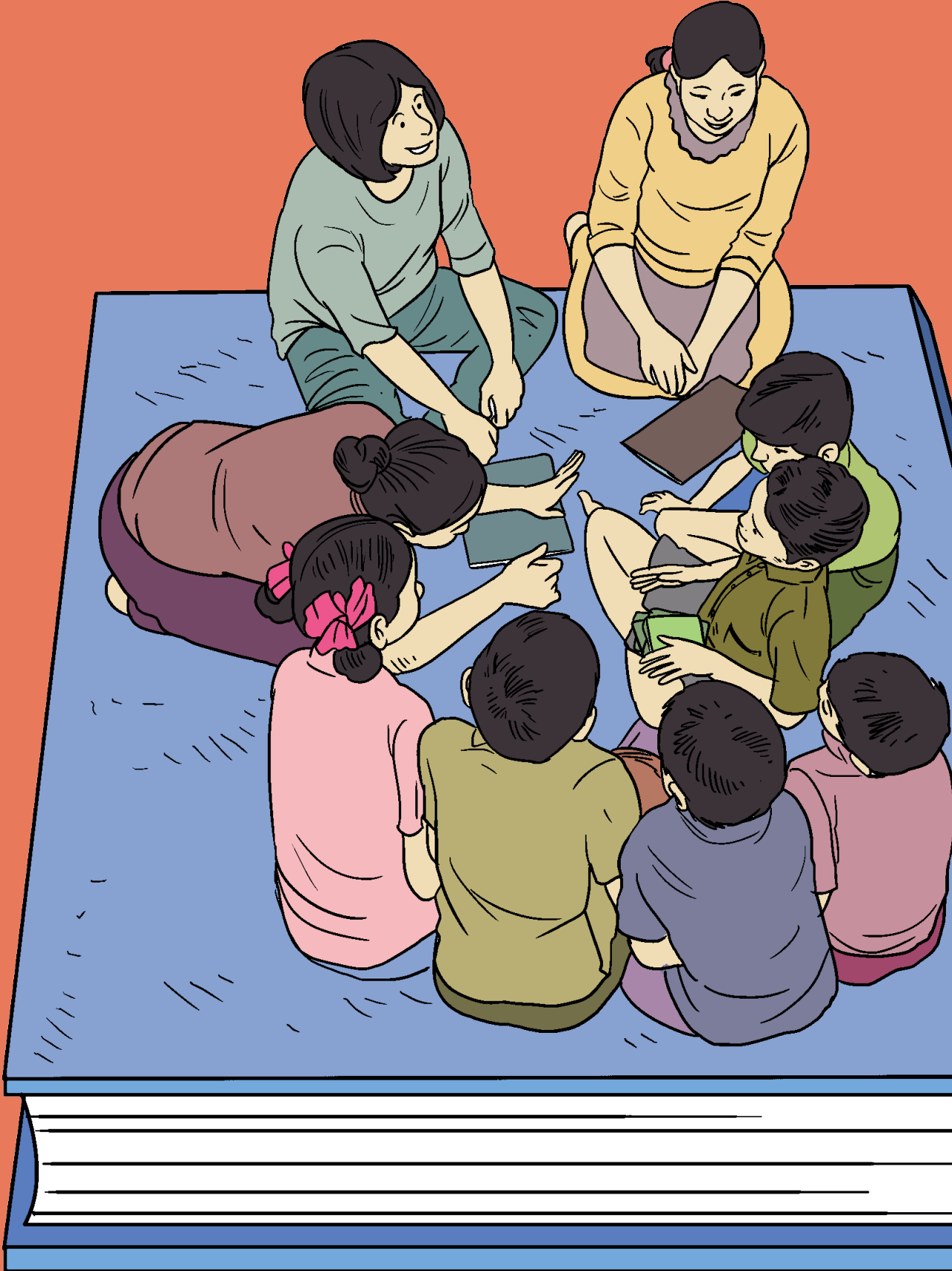
The available body of research does not specifically examine how the RUU P-KS and revised UUP contribute to achieving gender equality. There is also no research providing evidence of stakeholders' support for RUU P-KS to be discussed and passed, and of their support for the operationalization of the revised UUP in order to effectively eliminate child marriage.

This study fills the said research void, and findings are expected to contribute towards ensuring the passage of the bill into law, especially with the support of stakeholders, including in the form of feedback on improving the formulation of the bill's norms. Similarly support for the operationalization of the revised UUP is expected to contribute towards government efforts and interventions in respect to prevention and response for ending child marriage. Findings from this research can also contribute to the fight against gender inequality in Indonesia.

45 *Jurnal Perempuan* Edisi 88, Vol.21, No.1 (February 2016). Among others are the articles written by Mies Grijns, et al., *Pernikahan Anak di Sukabumi Jawa Barat: Diri dan Agensi Anak Perempuan*; Any Sundari, *Realitas Gadis Pantai Selatan Hari Ini: Kajian Kebijakan Pernikahan Anak di Gunung Kidul Yogyakarta*; Masthuriyah Sa'dan, *Ketika Anak Perempuan Melahirkan Bayi: Studi Kasus Pernikahan Anak di Sumenep Madura*; Ikhliah Muzayyanah Dini Fajriyah, *Adat Merariq NTB sebagai Upaya Mengakhiri Pernikahan Anak: Hak dan Kerentanan Anak Perempuan*; and Maria Ulfah Anshor, *Kerentanan Anak Perempuan dalam Pernikahan Anak*.

46 See BPS, Kementerian PPN/Bappenas, UNICEF, and Puskapa UI, *Pencegahan Perkawinan Anak: Percepatan yang Tidak Bisa Ditunda*, (Jakarta: BPS, 2020).

47 Dwianti F. Putri, *Studi Literatur Peraturan Daerah Pencegahan Perkawinan Anak*, (Jakarta: UNICEF in cooperation with AIPJ2, 2019), as excerpted from the Ministry of National Development Planning/Bappenas, *Strategi Nasional Pencegahan Perkawinan Anak*, (Jakarta: Kementerian PPN/Bappenas, 2020), p. 29.



CHAPTER III

URGENCY OF THE ANTI-SEXUAL VIOLENCE BILL AND REVISED MARRIAGE LAW FOR ACHIEVING GENDER EQUALITY

A. Promoting Gender Equality by Ending Violence against Women

The UN Declaration on the Elimination of All Forms of Violence against Women in 1993 recognizes violence against women as the manifestation of power relations that historically have been unequal between men and women. To achieve gender equality it is therefore necessary to eliminate all forms of discrimination against women, to remove all barriers that make it harder for women to be on equal footing with men, and to realize their rights. One form of violence against women that obstructs the pathway to gender equality is sexual violence.

Gender equality refers to equal rights, opportunities, and outcomes for both girls and boys, women and men. The word equal here does not mean that men and women are biologically the same. It points to equality in rights, responsibilities, and opportunities, irrespective of whether they were born male or female.⁴⁸

⁴⁸ Office of the Special Advisor on Gender Issues and Advancement of Women, Gender Mainstreaming: Strategy for Promoting Gender Equality Factsheet. (Osagi, 2001), <http://www.un.org/womenwatch/osagi/pdf/factsheet1.pdf>, accessed 12 July 2020.

Gender equality lies at the heart of the 2030 Agenda for Sustainable Development, which recognizes gender equality as a human rights concern that is fundamental for achieving all goals and targets. Apart from being one of the sustainable development goals (Goal 5), gender equality is also a dimension integrated in the other 16 goals.

The SDGs that are directly related to the elimination of violence against women and girls are Goals 5 and 16. SDG 5 specifically concerns the achievement of gender equality and empowerment of women and girls. Its target is to end all forms of violence against women and girls, including trafficking, sexual exploitation and other forms of violence (Goal 5.2), as well as harmful practices such as forced marriage, child marriage, and female genital mutilation (Goal 5.3). The SDGs are formulated within a strong gender framework that recognizes the interrelated economic, political and social dimensions driving gender inequality.

SDG 16 on the other hand seeks to promote peaceful and inclusive societies for sustainable development, including to bring an end to abuse, exploitation, trafficking, and all forms of violence, and torture against children (Goal 16.2). This goal in particular concerns girls at risk of all forms of violence. Goal 16.1 is intended to reduce all forms of violence and related death rates in order to create peaceful and inclusive societies. SDG 16 aims to reduce violence and related deaths among women, including deaths attributable to domestic violence and dowry, which are prevalent in developing countries.

The global development agenda acknowledges that sustainable and positive development outcomes would be impossible unless violence against women and children is effectively addressed. The prevention of gender-based violence should be transformative in nature, which means that it will consequently lead to improved health for women and children, higher economic productivity and educational attainment, and lower risk of mental illnesses. Moreover, it can help fast track the achievement of the SDGs.

At the international level, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Beijing Declaration and Platform for Action form part of global action to tackle gender inequality. Efforts have also been made at the national level, inter alia, the adoption of CEDAW through Law No. 7/1984 on the Ratification of CEDAW, Law No. 23/2004 on the Elimination of Domestic Violence, and Law No. 21/2007 on the Eradication of Trafficking in Persons.

In the context of the elimination of violence against women, the RUU P-KS and revised UUP are government instruments necessary for ending discrimination and removing barriers in a bid to fulfil women's rights. Through both legal instruments, gender equality is expected to be achieved.

B. The Role of RUU P-KS and Revised UUP in Promoting Gender Equality

There are three perspectives on the role of the RUU P-KS and revised UUP in advancing gender equality. First, both legal instruments will contribute directly to the achievement of gender equality. Second, they will have an indirect contribution as other factors come into play in accelerating the achievement of gender equality. Third, the RUU P-KS does not necessarily contribute to gender equality.

1. The Contribution of RUU P-KS and Revised UUP towards Gender Equality

The RUU P-KS and revised UUP play a role in ensuring gender equality with regard to four aspects. First, acknowledgement of sexual violence, especially the hidden cases. It can no longer be denied that sexual violence is prevalent in families and *pesantrens* (Islamic boarding schools), which only makes the bill even more crucial for clearing the way for victims to access justice.

“I believe that there will be tremendous contribution, especially in acknowledging sexual violence, the hidden cases in particular. Family institutions and pesantrens for example, we do not deny the many incidents taking place there. So it definitely has a significant contribution. The bill undeniably promotes gender justice.” Riri Khariroh, Chair of Consultation Institute for the Empowerment and Protection of Women and Children (LKP3A) of PP Fatayat NU.

Furthermore, the bill recognizes the rights of victims, families, and witnesses by referring to legal procedures that take into account the victim’s experience. The handling of sexual violence cases will therefore no longer focus only on the appropriate punishment for the offender.

Second, state recognition of women as equal citizens. The bill lays the foundation for the formal recognition of women’s role and self-worth, and as citizens equally entitled to protection. Sexual violence constitutes a criminal offense where the victim can either be a female or male. For certain types of sexual violence, such as forced abortion, only women are the victims. Men however are also at risk of sexual abuse.

Meanwhile, the revised UUP can also help prevent the practice of child marriage in Indonesia, which essentially robs girls of the right to basic education. Under the revised law, girls would be able to exercise their right to sexual and reproductive health, preventing their needless deaths considering their immature reproductive organs that are simply not ready for sexual intercourse and adolescent pregnancy. A minimum age for marriage that remains unchanged in the existing law signifies that differential treatment between sexes in terms of marriage is no longer sustainable. The revised UUP on the other hand provides an enabling environment for promoting gender equality.

When a woman marries at the age of maturity, she will be more prepared for married life. In a legal sense, she will have equal capacity and bargaining position. If for example her husband becomes abusive, she will have the power to say no. Bringing parity to the legal age of marriage for both male and female through the revised UUP will allow women and men to be equal partners in marriage and household decision-making. In short, setting the same age of marriage for both sexes will significantly contribute to gender equality.

Third, the RUU P-KS and revised UUP provide the basis for the legal recognition of equal standing before the law for men and women. This means no discrimination, or class bias. If the bill is passed, a sex offender for example will not be immune to law, and therefore liable to sanction. On the other hand, the victim shall be able to exercise her right to protection and rehabilitation as governed in the RUU P-KS.

As the RUU P-KS protects both men and women, male victims can also report their cases. In addition, the bill serves as a warning to offenders. It seeks to deter potential offenders, and restore the rights of the aggrieved victim.

The regulation of forced marriage as a criminal offense in RUU P-KS will allow for the prosecution of individuals who pressure others, whether male or female, to marry against their will. Victims of forced marriage will have the legal avenue to report their cases once the bill is approved. This also applies to other cases where a legal basis has never been available. Only then will women have equal standing in society, allowing them to free themselves from social subjugation. The bill sets the tone for ending violence against women. At the same time, it positively impacts on the fulfilment of rights, such as the right to education for girls. As such, the bill is inextricably linked to the overarching agenda of promoting equality.

“We may not be able to imagine it now, but if the bill is passed we can visualize how a person who forces marriage upon a woman will then be punishable. We can prosecute, and women’s position in society will be equal, in the sense that they can be free from social subjugation. So the bill is interlinked to the wider agenda of achieving equality.” Saras Dewi, Faculty of Humanities, University of Indonesia.

Fourth, the RUU P-KS and revised UUP will optimize the role of the government and social institutions in preventing sexual violence and child marriage.

Another important point to note concerns the contribution of the two legal instruments in promoting gender equality in society. Both policies must be followed by robust implementation as well as periodic and tiered monitoring and evaluation on their effectiveness on the ground.

2. Do RUU P-KS and Revised UUP Contribute to Gender Equality?

Meanwhile, the RUU P-KS and revised UUP are considered to only be part of wider efforts contributing to the achievement of gender equality. This is because the journey towards gender equality requires comprehensive measures that cover multiple dimensions, apart from legislative responses.

This perspective arises from the following rationale. First, the contribution of the two pieces of legislation will not be direct and immediate. The bill is intended to provide protection and a sense of justice to victims of sexual violence through the specific regulation of the crime of sexual violence, and guarantee of the fulfilment their rights. The revised UUP on the other hand aims to ensure that marriage takes place on the basis of a person's readiness in terms of mental, physical, and age maturity. Nevertheless, to this end further measures are necessary in which the implementation will take considerable time.

If the bill is passed, it must for example be followed by education and training for law enforcement officers, especially in instilling a legal culture that can remove the barriers faced by victims. In addition, a minimum age of marriage that is the same for men and women should be accompanied by equal access to education and employment, thus allowing the new norm for marriageable age to be upheld in society. In other words, the RUU P-KS and revised UUP must be followed by implementing regulations, and supporting interventions so as to make sure that the norms are effectively applied, and thereby promoting gender equality.

Second, a legislative response that includes the imposition of sanctions does not necessarily fix the problem. To achieve gender equality, empowerment from a gender perspective and public understanding of equal gender relations in society are critical. This needs to involve religious leaders, traditional elders, influential community figures, and even women as many prominent female figures still hold a patriarchal perspective, and therefore need to be educated.

This perspective emphasizes on the importance of awareness and knowledge in promoting gender equality. The enactment of the revised UUP does not mean that the issue of child marriage is summarily resolved. This is also the case when the RUU P-KS is approved. Specific actions dedicated to the cognitive dimension—changing public mindset on gender relations, and building public understanding on the urgency of gender equality—are of utmost importance.

"...because gender equality lies at the awareness and knowledge level. This (RUU P-KS and revised UUP – ed.) indicates a top-down approach, which will not be effective unless for example laws to end violence against women "come through". And even this is not the ultimate triumph, as is the case when the minimum age of marriage was revised.

It is not the last battle. There are many more. What needs to change is in the area of empowerment, and the public's mindset on the importance of balanced gender relations. Now that is a difficult task. Maybe even more difficult, or at least as difficult as preventing child marriage." Achmad Hilmi, researcher at Rumah KitaB.

This perspective also brings attention to the long list of unfinished business that needs to be resolved in order to achieve gender equality. They include the enactment of implementing regulations, and concrete steps toward reconstructing public mindset, especially in changing a deeply ingrained patriarchal mentality.

"This is just an initial step. There is still a long road ahead, and as we have discussed earlier there's still plenty that needs to be done ... Now we have two pieces of legislation, the RUU P-KS and the revised UUP, and they need to be reinforced with implementing regulations, and find ways to construct and reconstruct public mindset." Lecturer at the Faculty of Law, University of Indonesia.

On the other hand, these efforts face challenges arising from the contemporary situation in society. First, the polarization caused by the 2014 elections, which has led to a whole set of problems. Second, the rise of puritan groups who support discriminatory views and practices, manifested among others in child marriage.

3. Is there really no Correlation between RUU P-KS and the Elimination of Gender Inequality?

The main argument underpinning this perspective is that the RUU P-KS does not expressly discuss gender equality, and neither does it explicitly explain the specific responses needed to overcome gender inequality. The bill is seen to be focused mainly on regulating the crime of sexual violence, and the fulfilment of victim's rights.

The legal reform that the bill offers will open up access to justice for victims. This among others is indicated in the formulation of the material sources of law on criminal norms that are previously unrecognized by law. The bill therefore is directly related to the fulfilment of the victim's rights in terms of response and protection, yet at the same time is not considered to be specifically correlated with efforts to eliminate gender inequality.

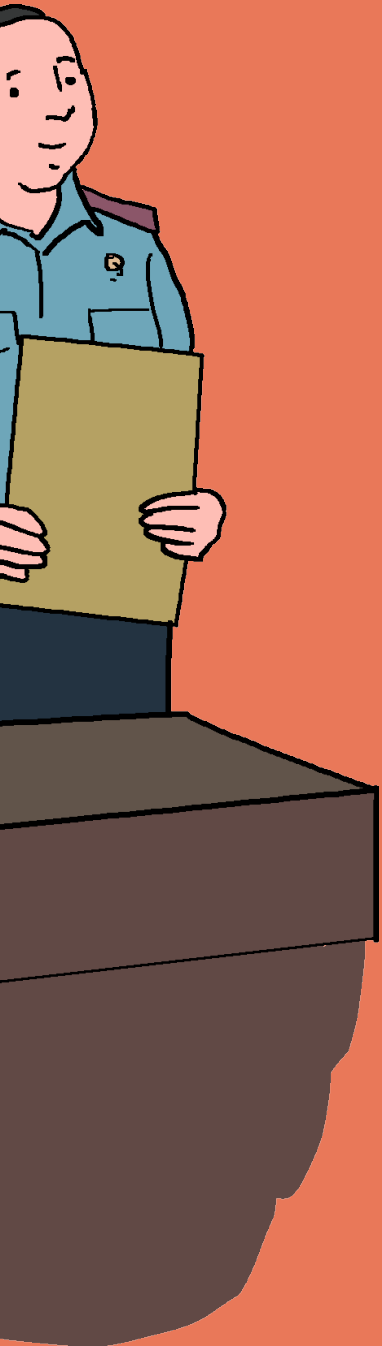
“There is still much work to be done, as from what I know from the Bill on the Elimination of Sexual Violence, it specifically discusses sexual violence. So at the very least, the rights of victims of sexual violence are fulfilled. But if we talk about gender inequality, this is something that is not discussed, or will not directly be impacted by the RUU P-KS. To me, this is because it is one level below.” Sophia Hage, Founder of Lentera Sintas Indonesia Foundation.

The revised UUP is considered to positively contribute towards gender equality, directly and indirectly. Opinions however differ on the correlation between the RUU P-KS and the elimination of gender inequality. Despite views that agree the RUU P-KS contributes directly or indirectly to gender equality, there are opinions that do not see the link between the RUU P-KS and the achievement of gender equality.



CHAPTER IV

STAKEHOLDER PERCEPTIONS AND SUPPORT TOWARD RUU P-KS



A. Stakeholder Support for RUU P-KS

The support from stakeholders toward the RUU P-KS is shown through their approval and involvement. At the approval level, support is demonstrated by an understanding of the need to address sexual violence through legal reform. On the other hand their engagement is shown among others by the constructive inputs on the content of the bill, dissemination and sensitization, involvement in advocacy networks, and awareness-building initiatives on the issue of sexual violence and the urgency of the bill. Stakeholders who show support through their engagement also naturally agree with the bill.

Public service providers, youth groups, survivors and their families on average show strong support through engagement. Meanwhile, some religious and *penghayat kepercayaan* organizations, and civil society groups are at the approval level, and others at the engagement level. This is also the case for other stakeholders. The variation in the level of support can be explained by the intensity of stakeholders' exposure to cases of sexual violence, the barriers relating to sexual violence, and the level of knowledge on gender inequality.

Support from public service providers⁴⁹ is mainly based on the rationale that legal reform is urgently needed to surmount barriers to handling cases of sexual violence. The barriers include LEAs' mindset (the legal culture component), poor handling of cases due to lack of synergy between services (legal structure component), and weak legislation on sexual violence, and the regulatory void for handling cases of sexual violence (legal substance component).⁵⁰ These issues cannot be resolved through minor tweaks to existing laws, but a comprehensive legal framework should be in place to handle cases of sexual violence as provided in the RUU P-KS.

There is not much difference in the support expressed by the respondents interviewed for the bill as a comprehensive legal framework to address sexual violence. These respondents include civil society activists, prominent figures in women's empowerment community organizations, journalists, academics, corporations, professionals (health workers, psychologists), youths, survivors and their families, national human rights institutions as well as government ministries and agencies. Research subjects also include key persons in religious and *penghayat kepercayaan* organizations, as well as religious leaders.

As for religious and *penghayat kepercayaan* organizations, support towards RUU P-KS is based on the universal principle that applies to all religions and faiths, whereby sexual violence is strictly prohibited.⁵¹ In principle, every religion forbids a person to sexually violate another person.⁵² In the unlikely event that a religion condones such act, it amounts to the abandonment of humanity and justice, and therefore does not deserve to be called religion.⁵³

"In the religious context, sexual violence is an act of evil that Muslims should avoid committing." Executive of an Islamic Community Organization.

Nevertheless, it is an undeniable fact that certain interpretations of religious teachings continue to facilitate the occurrence of sexual violence in society. In Christianity for example, gender inequality is perpetuated through scriptures that are interpreted textually instead of contextually, where the holy books were written during the time of the patriarchs, and later read by people who themselves were part of a patriarchal society. Similarly in Islam, certain mindsets continue to condone and encourage sexual violence. Ironically, this frame of mind is also held by society at large, and therefore becomes a major obstacle. There are even certain religious groups who believe that women are not equal to men. This notion is espoused by certain religious clerics and preachers who exert considerable influence on others.

49 Community-based service providers, such as LBH APIK Jakarta, Flower Aceh, LBH APIK NTB, Pulih Foundation, PKBI, LBH APIK Makassar, HWDI, WCC Malang, etc. A government service provider that is the subject of this research who showed support is P2TP2A DKI Jakarta. The rationale put forward by service providers on the urgency of the RUU P-KS is not much different than the argument offered by some civil society organizations, journalists, academics, corporations, professional groups, youth groups, and national human rights institutions.

50 The barriers in the legal system have eventually been identified as problems that the RUU P-KS is expected to solve as explained in another section of this report.

51 Support is expressed by PP Muhammadiyah among others, through the organization's Legal and Human Rights Council in which PP Aisyiyah—as part of the organization—occupies an equal position, PP Fatayat NU, Lajnah Imaillah JAI, Indonesian Confucian Women, Indonesian Hindu Dharma Women, Association of Theologically-Educated Women (Peruati), Indonesia Bishop Conference HAAK Commission, Indonesian Confucian Religious High Council, Communion of Churches in Indonesia (PGI), *penghayat kepercayaan* representatives of the Sunda Wiwitan Cigugur Kuningan traditional belief, and Indonesian Council of Indigenous Beliefs (MLKI).

52 Interview with Musdah Mulia, Chair of ICRP, 17 March 2020.

53 Interview with WB, Confucian religious organization, 20 March 2020.

Under such circumstances, every religion should address this problem by reinterpreting religious doctrine that is more favorable to women and children, and that condemns acts of sexual violence. PGI for example has called upon their congregation to read the Holy Scriptures contextually or through a different lens.⁵⁴ Similarly, the Indonesian Association of Theologically Educated Women (Peruati) reinterpreted biblical texts relating to violence.⁵⁵

In Islam, religious jurisprudence or *fiqh* should be comprehensively revisited, and mainstreamed into interpretations of Islam that is distinctive to the Indonesian context. Only then can we shed the prejudiced mindset, which is in fact an archaic mentality of the Middle East that has nothing to do with Indonesia. Society needs to build a new mindset on religions, cultures, and traditions that are in favor of eliminating sexual violence. Progressive Islamic religious organizations and leaders have reinterpreted religious teachings in support of equality and justice,⁵⁶ but this still require further support for massification (dehumanization) in a widespread and comprehensive manner.

Apart from the universal values of religions and beliefs, support for the RUU P-KS from religious and *penghayat kepercayaan* organizations is also based on concerns over the prevalence of sexual violence. Victims need protection, and therefore state intervention through a legislative response is necessary.⁵⁷ Another reason for supporting the RUU P-KS is premised on the belief that discussions over the bill will contribute to building public awareness on sexual violence.⁵⁸

Given the urgency of the bill, a prominent religious figure has reminded legislators and the government of the pressing need to finalize the RUU P-KS. The absence of serious efforts to address and prevent sexual violence according to him is morally wrong.

“In my opinion, the RUU P-KS is extremely urgent and important. If it is not approved, I consider parliament and the government to have seriously transgressed, they are the ones who have primarily committed a sin for allowing sexual violence to occur in Indonesia without any serious effort given the power that they wield.” K.H. Marzuki Wahid, Secretary of PBNU’s Institute of Human Resource Studies and Development (Lakpesdam PBNU).

Apart from the shortcomings in the legal system, survivors and their families have also brought attention to the profound consequences of sexual violence on every aspect of their lives—physical, psychological, sexual, economic, and social. Sexual violence wreaks havoc on the lives of the victims and their families who often times are left on their own to cope with

54 Interview with Gomar Gultom, Chair of PGI, 18 March 2020.

55 Ratnawati Lesawengan, Peruati, in an FGD with religious organizations, 28 February 2020.

56 This among others has been done by PP Muhammadiyah and PP Aisyiyah through their Tuntunan Keluarga Sakinah (Guidance for Harmonious Families) program, Nahdlatul Ulama and PP Fatayat NU through the Keluarga Mashlahah family concept, Alimat through Gender Justice in Islam, KUPI through its fatwa (ruling) issued in 2017 that prohibits sexual violence and child marriage, Lajnah Imaillah JAI through guidance for Muslim women, and others.

57 Is Werdiningsih, adherent of an indigenous belief, Indonesian Council of Indigenous Beliefs, in an FGD with religious organizations, 28 February 2020.

58 Euis Kurniasih, adherent of Adat Sunda Wiwitan, in an FGD with religious organizations, 28 February 2020.

their psychological trauma.⁵⁹

“Worse yet for me, I was broken. But as a parent I had to act strong. Whatever the situation, I must hide my emotional pain from the child. But it’s still obvious. I’m telling you, the burden is unbearable,” I, mother of an incest survivor.

The situation is made worse when the victim faces difficulty accessing psychological trauma recovery services, either due to the unavailability,⁶⁰ or inadequacy of recovery facilities,⁶¹ or the unsupportive responses of officers working with victims.⁶² Nevertheless, of the few competent providers available, they have to independently finance their work in delivering the services, which require substantial funding.⁶³ The many obstacles faced by survivors and their families in the handling of their cases are among the reasons cited for supporting the RUU P-KS, in the hope of paving the way towards improvement.

The RUU P-KS can provide a way out as it includes provisions that govern on victim protection and recovery. The bill therefore does not only address the crime of sexual violence and the punishment of offenders. The equal attention given to victim protection and the punishment of sex offenders provides the rationale behind the support of some civil society organizations for the bill.⁶⁴

Apart from the expectations placed on the RUU P-KS for the better handling of cases, support for the bill is also evidenced by inputs on improving the bill with a view of making sure that the said expectations are met. The Indonesian Women’s Coalition (KPI) for example is one of the organizations who offered input for improvement.⁶⁵ KPI is a civil society organization with 46 thousand members spread across 18 provinces in 48 branches and 1,117 *balai perempuan* at the village or urban ward level. Similarly, Nahdlatul Ulama (NU) at its National Consultation of Religious Scholars and Grand Conference in 2019 expressed support for the RUU P-KS and offered input on the formulation of the crime of sexual violence.⁶⁶ This was also conveyed by PP Aisyiyah and PP Muhammadiyah where the organizations’ official stance on the bill was expressed through PP Muhammadiyah’s Law and Human Rights Council.⁶⁷

59 As recounted by I, the mother of an incest survivor, after filing a report to the police, she had to seek information on victim recovery service providers. When she went to P2TP2A in Depok during working hours, no one was around except for the gardener. She eventually could access another recovery facility after a MoWECF official made an impromptu inspection visit to P2TP2A Depok on the same day (interview with I, 24 March 2020).

60 For instance, the unavailability of psychologists in certain districts/cities such as Halmahera, Kendari, etc. (Vitria Lazzarini, P2TP2A DKI Jakarta, in an FGD with service providers, 21 February 2020).

61 As told by I, the mother of an incest survivor, the safe house that her daughter went to did not provide recovery services, the bathroom door has no lock, and victims were all placed together in the same space, and therefore would hear others sharing their stories of pain and anguish (interview with I, 24 March 2020).

62 As recounted by R, a trans man survivor, when he was referred to a government service provider in Aceh, he instead got an earful from the officer on duty, and was told to repent (Interview with R, 25 March 2020). Ninuk Widyantoro also described her experience in the placement of a psychologist at a counselling center who instead lectured clients seeking help (Interview with Ninuk Widyantoro, psychologist and executive of Women’s Health Foundation, 26 March 2020).

63 For example LBH APIK Jakarta, where according to I, the mother of an incest survivor, the legal counsel had responded quickly, and gave full attention to the victim, and even paid for hospital expenses for recovery services. The victim’s mother expressed her hope that there will be more legal counsels available. (Interview with I, mother of incest survivor, 24 March 2020).

64 As mentioned by Junito Drias, Jaringan Aksi, in an FGD with CSOs and journalists, 4 March 2020.

65 Interview with Dian Kartikasari, Secretary General of Indonesian Women’s Coalition (Sekjen KPI) 2009-2019, 21 March 2020.

66 Interview with Riri Khariroh, Head of PP Fatayat NU’s LKP3A, on 20 March 2020. See also <https://www.beritasatu.com/nasional/540655-mu-naskonbes-nu-setuju-ruu-pks-dengan-catatan>, accessed 11 July 2020.

67 Interview with Tri Hastuti Nur Rohimah, 29 April 2020.

Support for the RUU P-KS was also concretely shown by civil society organizations involved in women's empowerment, such as the Indonesian Women's Congress (Kowani), a federation that unites 91 women's rights organizations in Indonesia. Kowani educates and sensitizes member organizations on the importance of collectively working towards ensuring the passage of the bill into law.⁶⁸ PP Fatayat NU also followed suit, mobilizing its members to join forces with other civil society organizations in advocating the RUU P-KS.⁶⁹

Civil society networks create synergies in three aspects—lobby, campaign, and substance—while engaging with Komnas Perempuan as a national human rights institution with the specific mandate of creating an environment where women can live a life free from violence. Many youth groups have also been involved in campaigns, standing on the frontline of efforts to raise public awareness and build public support. These stakeholders have significantly contributed to building public awareness, especially given the increasingly widespread use of the internet, specifically on social media platforms, where survivors share their stories of sexual violence, or members of the public inform on cases that occur around them.

Based on past advocacy campaign strategies, particular notes should be given to certain areas of improvement. First, the importance of using concepts that can easily be understood and accepted, and that do not put labels. The concepts should be conveyed in a language tailored to the intended target audience for a better grasp of the issue, and for strengthening support towards the bill. This also helps anticipate interpretations that may be out of the context.

Second, expand the campaign's target audience. Target groups that have not been reached before or have not been exposed to the issue of sexual violence should be introduced to facts about sexual violence. It is hoped that a better-informed public would lend support to the bill.

Third, build stakeholder engagement and commitment to strengthen support and messaging. The more diverse the background of the stakeholders supporting the bill, the stronger the messaging and the wider the reach. Hence, the importance of identifying influential figures as campaign champions

Civil society networks include public service providers not only based in DKI Jakarta that are working towards building support for the RUU P-KS. These networks span across regions that include Southeast Sulawesi, Maluku, NTB, NTT, Bali, East Java, Central Java, Yogyakarta, West Java, Aceh, Bengkulu, Riau Island and Central Kalimantan.

68 Interview with Giwo Rubianto, Chair of Kowani, 3 April 2020.

69 Interview with Riri Khariroh 20 March 2020.

B. Stakeholder Perceptions on the Urgency of RUU P-KS

The support shown by stakeholders towards the RUU P-KS in general arises from the many problems in case handling by the relevant institution, as well as the troubling phenomenon of sexual violence. At the same time, these issues form part of the argument strengthening the case for the urgent passage of the bill.

1. Sexual Violence: Victims Need Help!

From a human rights perspective, we must not wait for more to fall victim, as every victim counts. Furthermore, even a seemingly minor form of non-physical sexual harassment like catcalling can make women feel uncomfortable, which can heighten into fear, and may end up in death.⁷⁰

Public service providers have recorded alarmingly high prevalence of sexual violence against women and children across Indonesia. Nine types of sexual violence were documented, but without any definite legal provisions that can be invoked to indict the offender (legal void). Victims of sexual violence are not only women, but also men. The impact on women however differs from that of men, in terms of sexual and reproductive health.

In 2019, LBH APIK Jakarta recorded nine types of sexual violence of which four were reported to the institution—physical and non-physical sexual harassment, sexual exploitation, rape, and forced abortion. At least 103 incidents of sexual violence were against adult women, and 46 cases against children, making it a total of 149 cases of sexual violence lodged with LBH APIK in 2019.

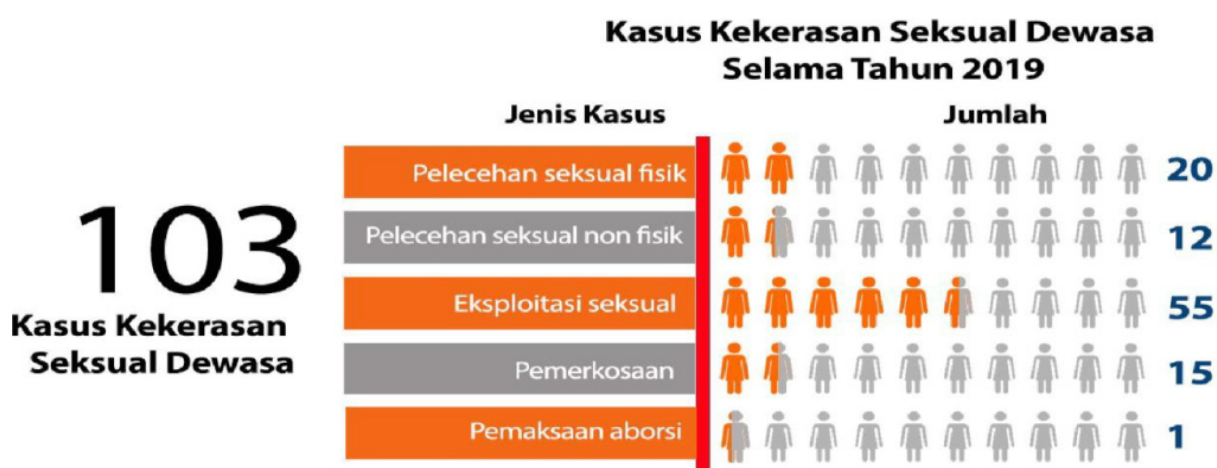


Diagram 1. Cases of Adult Sexual Violence Handled by LBH APIK Jakarta in 2019

Source: LBH APIK Jakarta's Report on Case Handling in 2019

⁷⁰ A case example of catcalling that led to fatal consequences befell a university student who was struck by a train when crossing the railway tracks with her earphones plugged in to avoid catcalling. The media and the local community instead blamed the victim "for using ear-phones". It was only days later, based on the testimony of her friends, that it was known she was trying to avoid being catcalled by loiterers around the area (interview with a lecturer of UI's Faculty of Law, 30 March 2020).

Meanwhile in Aceh, the number of cases of sexual violence as shown in Flower Aceh's Year-End Notes were high, at 72 percent out of all reported cases of violence against women and children. Rape and sexual harassment were the most common. In addition, the rate of domestic violence, including incest, is also a cause of concern.

Data compiled by Jaringan Aksi (Action Network)⁷¹ showed a much higher number of sexual violence cases against boys than girls. One in seven victims were boys and one in nine victims were girls.⁷²

In the past three years, from 2016 to 2018, Komnas Perempuan recorded 17,940 cases of sexual violence or 42 percent of the total incidents of violence against women at 40,849 cases. This means that on average there are 5,980 cases of sexual violence every year.⁷³ Of the 17,940 cases of sexual violence, 17,088 were reported by public service providers, of which 8,797 were rape cases. As many as 852 cases were reported to Komnas Perempuan, of which 111 cases were rape cases.

In 2011, Komnas Perempuan reported that in every two hours at least three women in Indonesia experience sexual violence. Meanwhile, the National Statistical Office (BPS) in 2016 found that one in three women in Indonesia were subjected to physical and (or) sexual violence.

The Witness and Victim Protection Agency (LPSK) reported that in 2019 the number of requests for protection at LPSK has increased. The number of people who received protection increased from 407 in 2018 to 510 in 2019. Of those protected in 2019, about five-sixths were children, and a considerable number of the protection requests were for cases of incest, or where the perpetrators were close to the victim. Incest offenders can either be the biological father, uncle, grandfather, elder or younger brother, while abusers known to the victims are either the stepfather, adoptive father, neighbor or teacher, including Quran teachers, religious teachers and school principals.⁷⁴

2. Sexual Violence: Tip of the Iceberg

Sexual violence is an iceberg phenomenon. Documented cases account for only a fraction of the actual situation in society. The figures, which represent the number of cases, are derived from reports lodged with public service providers. Meanwhile, many cases of sexual violence go unreported.⁷⁵

71 Jaringan Aksi is a network advocating for adolescent protection and empowerment, consisting of individuals, NGOs, and academics/researchers defending children's rights, especially teenagers, in an effort to achieve gender equality and gender justice. (<http://jaringanak-siremaja.com/tentang/>)

72 Junito Drias, Jaringan Aksi, in an FGD with CSOs and journalists, 4 March 2020.

73 Forum Pengada Layanan, Lembar Fakta Kekerasan Seksual dalam Angka: 1, Op. Cit.

74 Interview with Livia Iskandar, Vice Chair of LPSK, 19 March 2020.

75 This among others is confirmed in an online survey launched by Lentera Sintas Indonesia in cooperation with Magdalene.co and Change.org in 2016, which found that 93 percent of victims did not report their experiences with sexual violence. "Hasil Survei Kekerasan Seksual di Indonesia", Change.org, 29 August 2016, <https://www.change.org/id/changeorg-indonesia-changeorg-blog>, accessed 21 May 2020.

There are several reasons for a victim's reluctance to come forward. First, the stigma and perceptions of family and society towards sexual violence, especially when it happens to an adult woman, and therefore the tendency for victim blaming.⁷⁶ A culture that perceives sexual abuse as shameful that tarnishes the family name and the community also discourages victims from disclosure.⁷⁷

Second, the power relations between the victim and perpetrator, which renders the victim helpless and therefore would not even dare think of telling anyone in authority. Third, the victim's own lack of information on what constitutes sexual violence, not recognizing it as such, especially among child victims. This is due to the fact that the issue of sexual violence is never brought up within their immediate environment. Fourth, when victims do recognize that they have been sexually assaulted, they often do not know who to confide in or what to do.

Poor understanding of sexual violence and uninformed about legal remedies and victims' rights are also barriers to reporting sexual violence. Even among journalists, as an educated group with a strategic role in informing the public, their understanding of the issue and available legal remedies remains minimal. In a discussion of the film *More Than Work*,⁷⁸ which involved journalists in more than 120 locations, the questions raised by participants on the issue of sexual violence and victims' rights, and how to access these rights, were the most basic.⁷⁹

The iceberg phenomenon is also attributable to taboos, traditions, and mindsets of society, which will lead to female victims preferring to keep quiet about their ordeal given the many factors that they have to take into consideration.

3. Sexual Violence is Systematic Violence

Apart from being an iceberg phenomenon, sexual violence is also considered a systematic phenomenon. Due to the absence of a comprehensive legal framework for the elimination of sexual violence, the handling of cases is far from adequate. As a consequence, victims are denied the right to fair trial and to effective remedy. The legal system does not fully protect victims of sexual violence, and therefore sexual violence is often trivialized, without any deterrent effect on perpetrators. This contributes to repeat offending and the resulting consequences.

The situation is made worse by the state's lack of attention to the issue of sexual violence. The government's failure to acknowledge the sexual assaults that took place during the May

⁷⁶ For example, blaming the victim for her choice of clothing or for returning home at night, and thereby creating a disabling environment for female victims to come forward (Interview with Hannah AlRasyid, artist, 12 April 2020).

⁷⁷ Interview with Ansi Damaris, Director of LBH APIK NTT, 30 March 2020, and with Rosmiati Sain, Director of LBH APIK Makassar, 1 April 2020.

⁷⁸ The documentary film *More Than Work* by Luviana, a former TV journalist, tells the story of female workers in the media industry.

⁷⁹ Interview with Luviana, Konde.co, 10 March 2020.

1998 riots further attested to the government's disregard of the issue of sexual violence, particularly sexual violence against women. This sets a bad precedent for other types of sexual violence.

4. Sexual Violence and the Impact on Victims and their Families

Sexual violence has devastating consequences for victims, and therefore are in dire need of help. The mother of an incest survivor described how the child's emotions became uncontrollable, with angry outbursts, fits of screaming or crying, and even running around aimlessly while carrying a gallon water bottle. The survivor's eyes reflected fear and grief. She no longer recognized the people around her, nor does she socially interact with others, eventually become emotionally withdrawn.

"There were so many changes, physically and emotionally. And also her behavior towards others, and the gaze is not the same. There's fear, sadness. She's always suspicious of others, with anyone she meets."

"She completely changed within the next 3 to 6 months. It's been a year since she last went to school. She cannot interact with others. She doesn't even recognize her own friends. She would ask, "Where am I? Where was I before?" She doesn't recognize herself. She became even more withdrawn. No interaction." I, mother of an incest survivor.

The victim's family is also profoundly impacted, trying to help, but having to appear strong for the victim.

In cases where boys are subjected to sexual violence, in the context of a patriarchal society, they would tend to remain silent, and if left unaided will 'explode' when they become adults. For example, going on to become abusers themselves, or even committing suicide.⁸⁰ Even if the victims, male or female, do survive and continue with their lives, the effects of sexual violence are in fact long lasting, and cannot simply be reversed.⁸¹

5. Sexual Violence in the Private Realm: The Abuser is Someone Close

Sexual violence in the private sphere refers to the close relationship between the victim and perpetrator based on kinship, either by affinity or consanguinity. The people closest to the victim who are supposed to protect, instead pose a threat to the victim's safety and wellbeing. Sexual violence in the private realm includes incest or sexual relations between

⁸⁰ Based on information from Jaringan Aksi, suicide cases compiled by UNICEF showed that most were due to a history of sexual abuse during childhood. (Junito Drias, Jaringan Aksi, in an FGD with CSOs and journalists, 4 March 2020).

⁸¹ As conveyed by I, a survivor's mother, interviewed on 24 March 2020; H, transsexual survivor, interviewed on 12 March 2020; B, sexual assault and drug addiction survivor, 6 March 2020; R, trans man, interviewed on 25 March 2020; and K, trans woman, interviewed on 21 March 2020.

the victim and offender who are related by blood,⁸² sexual violence within marriage, and dating violence.

5.1. Incest

One of the reported cases of incest⁸³ is that of a father and his own 16 year old daughter. The offender was sentenced to 15 years imprisonment. An appeal against the conviction was filed, but denied.

LBH APIK NTT reported that sexual violence cases in East Nusa Tenggara are mainly incest. The abusers are either the victim's father, brother, grandfather, or uncle. Cases in which the victim is a child are more difficult to prove. As a witness, a child is not considered legally competent to testify, in addition to the lack of evidence due to the offender's closeness with the victim.

The situation in NTB is not much different than NTT. Sexual violence is prevalent in NTB, where there are cases of biological father incest. This is also the case for South Sulawesi where sexual violence against women and girls occurs almost on a daily basis.

5.2. Sexual Violence within Marriage

Sexual violence within marriage refers to violence that occurs within a husband-wife relationship. For example, a husband who was well-behaved and courteous before marriage would turn abusive and violent in bed. He would become sexually aroused only when the wife is in pain.

Such abusers have sadistic tendencies. Psychologist Zoya Amirin spoke on the differences between a sadist, masochist, and sadomasochist. A sadist is a person who gains sexual pleasure from inflicting pain on the partner. Masochist on the other hand refers to a person who enjoys sex when he or she experiences pain and suffering. A sadist who pairs up with a masochist (sadomasochist) or vice versa cannot be categorized as sexual torture. On the other hand, when a sadist partners with a non-masochist, or a masochist with a non-sadist, either will be subjected to pain.⁸⁴

Wives experience different forms of sexual violence. Based on data from Komnas Perempuan, there are 6,555 cases of violence against wives that were recorded by public service providers in 2019, of which 100 are cases of marital rape where the husband forces upon the wife sexual sadism and anal sex.

⁸² Komnas Perempuan recorded the highest number of cases of violence against girls in 2019, which surged to 2,341 cases from 1,417 (increased 65%) in the previous year. Of this number, incest accounts for the highest number of cases of violence against girls at 770 cases.

⁸³ In another case, a girl was raped since 5th grade by her mother's intimate partner. This is not considered incest, but constitutes sexual violence in the private domain due to the closeness between the victim and abuser, who is the mother's intimate partner although not married to each other.

⁸⁴ See minutes of expert meeting held by Komnas Perempuan and FPL, 3 December 2015. Unpublished.

5.3. Dating Violence

Sexual violence within a dating or intimate relationship also falls under the category of sexual violence in the private sphere. It is related to the power relations between the victim and offender that creates an emotional attachment. As a consequence, the victim finds it hard to leave the abuser and break the cycle of violence, or continues to be the target of exploitation.

In terms of dating abuse statistics, LBH APIK Jakarta in a 2019 report documented 63 cases, while Komnas Perempuan recorded 193 cases on a national scale. The abusers were either a current or former dating partner. Most cases were perpetrated by the current dating partner.⁸⁵ The forms of dating abuse include forced sexual intercourse, forced sex video calls, leaking of suggestive images, and forced sexual variations that involve sadism or pain infliction. Certain cases also involve extortion, threats to distribute private photos, and non-consensual taking of intimate images.

The pattern of dating violence committed by the current or former dating partner is almost the same as that of cyber violence. The perpetrator would threaten to distribute sexual images or videos of the victim on social media if she refuses to have sex, or to get back together, or she decides to end the relationship. The perpetrator would also mislead the victim into sexual intercourse under the false promise of marriage.

MSM (men who have sex with men) also experience sexual violence, which include non-consensual sexual intercourse and sexual exploitation with the threat to distribute the victim's private images. The victim is also subjected to extortion, and prevented from leaving the house.

6. Groups Vulnerable to Sexual Violence

6.1. Persons with Disabilities

Based on data compiled by the Indonesian Association of Women with Disabilities (HWDI), from November to December 2019 there were 143 cases of abuse against women and girls with disabilities, most of which were sexual violence that included sexual harassment, rape, forced abortion, and force sterilization.

The violence endured by persons with disabilities is mainly attributable to their lack of knowledge, often forced to marry, or divorce, or have children, but are then denied from raising the children on their own. They are considered to be legally incompetent, and incapable of looking after themselves. Furthermore, disabled women and girls tend to know little about sexuality as their parents themselves are unaware of the available resources on

⁸⁵ See LBH APIK Jakarta, *Negara Harus Serius Melaksanakan Komitmen Perlindungan Perempuan Korban Kekerasan Berbasis Gender*, Catatan LBH APIK Jakarta Berdasarkan Pengalaman Penanganan Kasus dan Advokasi 2019, (Jakarta: LBH APIK Jakarta, 2019), p. 28. See also Komnas Perempuan, *Kekerasan Meningkat: Kebijakan Penghapusan Kekerasan Seksual untuk Membangun Ruang Aman bagi Perempuan dan Anak Perempuan*, Catatan Kekerasan terhadap Perempuan Tahun 2019, 6 March 2020, (Jakarta: Komnas Perempuan, 2020), p. 15.

sexuality that they can access. Under such circumstances, women and girls with disabilities are more vulnerable to sexual violence.

6.1. Commercial Sex Workers

The Indonesian Organization for Social Change (OPSI) from 2019 to March 2020 documented 270 cases of violence against sex workers, of which 49 were sexual violence. The perpetrators are clients, pimps, persons in authority, and journalists.

The type of sexual violence reported by sex workers is provided below:

Harassment	<ul style="list-style-type: none">• Harassment, where persons in authority or journalists harass sex workers during raids, including taking their pictures and sharing them to the media without pixelating their faces• Sexual harassment, accompanied by mistreatment such as beatings, unwanted kissing, biting, slapping, hair pulling, and other harsh treatment
Rape	<ul style="list-style-type: none">• Forced sexual intercourse with sadism, including anal and oral sex• Forced and unprotected sexual intercourse, or forced to perform sex acts that were not agreed upon earlier• Forced sexual intercourse with a victim, who only offer hand-jobs, at gun-point as the perpetrator claims to be a police• Forced to provide sexual services even when the victim is unwell, and asked permission to not go to work
Sexual Exploitation	<ul style="list-style-type: none">• Sexual exploitation such as the case of a sex worker (NN) who was trapped in sexual exploitation

Diagram 2: Type of Sexual Violence Experienced by Sex Workers

Sexual violence is not only experienced by female sex workers. Male sex workers are also victims of rape, including forced, unprotected sexual intercourse, or to perform sex acts that were not agreed upon earlier.

6.2. Sexual Minorities

Sexual harassment is a common occurrence for trans men who do not recognize it as such. For example, being embraced by a male friend is considered normal as it is between two males, even when the perpetrator has sexual intent. Trans men have also been sexually harassed by law enforcement officers. For example, the harassment experienced when filing a report with the police who would make inappropriate statements and (or) pose questions about their gender or physical appearance, or make unwanted physical contact. Trans women are also not immune to harassment by persons in authority who would touch their breasts.⁸⁶

⁸⁶ R, trans man, interviewed 25 March 2020; K, trans woman, interviewed 21 March 2020.

Sexual harassment in public spaces by being called a sissy or transgender is also often experienced by effeminate men. This has grave consequences on their education and work to the point that some would quit school, or see their work affected.

Another form of sexual violence is the parent's subtle coercion of a child into marriage by invoking religion or belief as justification. This is experienced by lesbians, gays, and transgender people. Some trans men would eventually bow to such pressures as part of their respect and devotion to their parents. Such marriages however do not stop some men from having sex with other men, and thereby may pass on HIV or other sexually transmitted infections (STIs) to their partners.

Meanwhile, within intimate relationships, MSM experience various forms of sexual violence. For example, rape, forced and unprotected sexual intercourse, or performing sexual acts that the victim did not agree with earlier.

The sexual violence experienced by transgender people and MSM often go unreported. They are reluctant to come forward as it would mean the disclosure of their identity, which may backfire, given the stigma deeply ingrained in society.

"I think it's about the whole situation, because members of the community in Jakarta still feel marginalized. They still fear if their identity is exposed, and may backfire on them. On the one hand, they feel aggrieved, wanting to report yet they need to weigh up the pros and cons. Not to mention, for example, if the people around them find out about their sexual identity, their sexual orientation, more stigma for them."
W, a MSM survivor.

Furthermore, they also find it hard to access transgender-friendly recovery services, such as psychological assistance. This unmet need is due to the scarcity of psychologists who do not consider being transgender as a mental disorder.⁸⁷

6.4 Drug (Narcotics, Psychotropics, and Addictive Substances) Users, and Women Living with HIV/AIDS

When women who use drugs, and who live with HIV/AIDS experience sexual violence, they are confronted with the 'to report or not report' dilemma. The absence of any guarantee for the confidentiality of their health status and protection as victims discourages them from coming forward.

87 R, trans man, interviewed 25 March 2020.

“It’s a bit tough for women simply because they are women, again it’s all about being a woman. Because of our activities or professions, we prefer to just “keep silent”. Especially if the woman uses drugs. How can I report my partner, when I’m still using it (drugs, ed.), If I were to come forward, and I was required to take a UT (urine test, ed.), then I’ll also be in trouble. Nothing I do will be right. Or for a woman living with HIV. I’m one of them, and I was subjected to violence. Should I come forward or not? If I tell what happened, then my story will be out in the open. Meanwhile, the prosecutor or judge is not all too familiar with this. Who can guarantee that details about me will not be disclosed? I actually intend to report so that I do get protection, but I may instead put myself in a catch-22 situation, where the backfire could be worse.” Female drug addiction survivor, and woman living with HIV/AIDS.

In the context of drug users, a patriarchal culture makes the situation worse for women trapped in the cycle of drug addiction and sexual violence. Men who use drugs are considered cool, while female drug users are labelled worthless, leaving them with no other choice but to find a partner within the inner circle of drug-using peers, and making them vulnerable to violence, including sexual abuse.

7. Locus of Sexual Violence: From Offline to Online

In addition to the nine types of sexual violence that existing legislation has yet to fully address, there is now a new modus operandi of sexual violence, from offline and now seeping into virtual spaces. Online sexual violence is also expected to be covered by the RUU P-KS.

The internet’s rapid growth also helps create a new locus for sexual violence to take place. Komnas Perempuan mentioned violence in the digital age as a new trend, where previously no incidents were reported to then lately see an increasing number of cases.

The different types of cyber sexual violence are provided below:

Revenge Porn	Malicious Distribution	Deepfake Porn or Fake Pornography
The threat to leak private content to the public, often by people close to the victim	The threat to leak private content to the public, by a certain entity or person. For example, an online lending company that threatens or commits malicious distribution against a borrower who could not repay the loan	Pornography that is doctored by using deepfake technology to morph the victim’s face or body.

Diagram 3: Cyber Sexual Violence

Source: Compiled from interviews and FGDs

For law enforcement agencies (LEAs), cases like these are a new phenomenon, with no definite legal provisions on which to indict. In the end, the KUHP would normally be invoked, specifically on the charge of defamation or offensive acts, in addition to Article 27 of the Electronic Information and Transactions Law (UU ITE), all of which are ambiguous clauses. On the other hand, victims of cyber sexual violence also fear of being criminalized under the Anti-Pornography Law and the UU ITE.

Reported cases of cyber violence against women that LBH APIK Jakarta has dealt with since 2018⁸⁸ showed a specific yet extremely complicated pattern. Victims who decide to come forward would find it hard to provide evidence. One of the reasons for this is because the perpetrator is not known, and the victim tends to be fearful lest their private photos or videos are openly shared.

The evidentiary process at the police is hampered by the shortage of experts who understand gender-based violence and its connection to UU ITE. The law substantively regulates on the evidentiary process through digital forensics, whereas the supporting facilities to perform this is only available at Polda Metro Jaya (Jakarta Metropolitan Regional Police), and therefore the process would be time consuming.

8. Root Causes of Sexual Violence

8.1. Power Relations

One of the causal factors of sexual violence is power relations, where a person may feel that he has power over someone else's body or position. This is reflected in the unequal relationship between the perpetrator and victim. Power relations refer to the asymmetrical relationship between the perpetrator and victim, whether structurally due to work or position, or culturally, such as when it involves religious leaders.

In many cases, this unbalanced relationship is a major factor for the occurrence of sexual violence. The perpetrator has authority over the victim, and knows very well that the victim is in a weak position. The perpetrator is typically a person close to the victim, and therefore finds it easier to dominate.

Survivor respondents for this research confirmed the power relations that exist in cases of sexual violence that they have experienced, including the parent-child, client-sex worker, and lecturer-student relations. Sexual violence is not only driven by the offender's sexual desire, but also the fact that the offender exerts influence or power over the victim. With this in mind,

88 LBH APIK Jakarta documented 148 reported cases of sexual violence in 2019, of which 17 are cyber sexual violence on social media. The reported cases include the threat to distribute private photos or videos (7 cases), revenge porn (5 cases), cyber bullying (2 cases), and sexual exploitation (3 cases). Meanwhile, the social media platforms commonly used are the Tinder dating application, WhatsApp, Instagram, Line, and Gmail.

the specific behaviors and conditions that form the internal factors prompting a person to commit sexual violence are not the causal factors, but are merely symptoms that cannot be generalized.

8.1. Gender Constructions that Tend to Discriminate against Women

The patriarchal culture or gender constructions in society that tend to discriminate against women are another causal factor of sexual violence. This is evidenced by a deep-seated mindset that objectifies women, and negates women’s right to bodily autonomy, which takes place at the individual and state level.

Due to a patriarchal culture that perceives women’s bodies as mere sexual objects, sexual violence is normalized, and not even seen as a violation of the law. Sexual violence can therefore occur when the perpetrator comes from a family or environment that strictly uphold patriarchal norms and values. Apart from being objectified, women are perceived as weak, and as such become targets of violence.

This patriarchal mindset is compounded by religious interpretations that denigrate women. Women are not respected, including in terms of their sexual and reproductive health and rights. This prejudiced mindset is held by different elements of society, from the uneducated to the learned, including among women themselves who still believe that they are inferior to men.

9. Perpetuating Factors of Sexual Violence

The mindset of LEAs, which is one of the factors entrenching a culture of sexual violence as identified in the legal culture and legal substance components, hampers responses to sexual violence, not to mention the weaknesses and gap in the legal system for handling cases of sexual violence. When different forms of sexual violence are not recognized by law as such, the offender will think that such heinous acts are normal. Due to inadequate legislation on sexual violence, law enforcement cannot be optimized.

Apart from the two factors above, other contributors to the persistence of sexual violence are as follows:

Table 1. Perpetuating Factors of Sexual Violence

No.	Perpetuating Factor	Description
1	No concrete efforts from the government to address the causes of sexual violence	If society’s gender construction that tends to discriminate against women is not being addressed, the root causes of sexual violence will persist. Hence, the need for the government to take concrete steps to eliminate gender inequality in society. Unless such efforts are done in a systematic and extensive manner, we should not expect incidents of sexual violence to reduce any time soon.
2	Lack of education on sexual and reproductive health and rights	Victims who are uninformed about their sexual and reproductive health and rights will not recognize their trauma as sexual violence. Offenders on the other hand lack the awareness to appreciate humanity, including in refraining from causing harm to others.

Source: Compiled from interviews and FGDs

Stakeholders in general have shown strong support towards the RUU P-KS, and have high hopes for the bill. The bill therefore should provide the best solutions for overcoming the barriers to the effective handling of sexual violence cases in terms of the legal system and recovery mechanisms. It is time for the state to show its commitment, and be involved in the advocacy movement in making sure that victims of violence are no longer left to fend for themselves without proper intervention. This is particularly urgent given the significant number of victims of sexual violence as documented by various institutions, and the devastating impact on the victims.

In addition, the RUU P-KS is seen as an important instrument for getting to the crux of the matter and effectively addressing the causal and perpetuating factors of sexual violence. The bill is expected to serve as a platform for major transformation in order to create a culture that respects women's bodies and their right to bodily autonomy.

In addition to the formulation of the nine types of sexual violence as a criminal offense, the RUU P-KS also emphasizes the importance of education and awareness to address various causes of sexual violence. Education on sexual and reproductive health and rights (SRHR) must also be carried out by the state in a bid to eliminate sexual violence in a systematic and extensive manner.



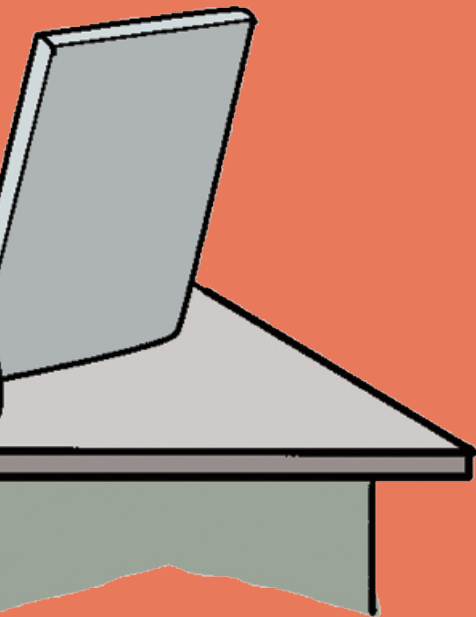
CHAPTER V

STAKEHOLDER PERCEPTIONS TOWARD THE SUBSTANCE OF RUU P-KS

The pressing need for legal reform in order to overcome obstacles in handling cases of sexual violence provides the impetus for public service providers and stakeholders to support the RUU P-KS. Hopes are pinned on the bill to address the many barriers to case handling with regard to legal culture, legal structure and legal substance. At the same time, the RUU P-KS in terms of content is also expected to provide a way out to these problems, including on the victim's recovery mechanism.

The weaknesses and gaps with regard to legal substance regulating the crime of sexual violence need to be addressed by the bill. The formulation of the crime of sexual violence in the bill can provide solutions to removing existing barriers to law enforcement. The bill is expected to serve as a key source of reference for handling various types of sexual violence, and therefore there should no longer be an excuse to not bring cases to court for not satisfying criminal elements that would not otherwise be in place in existing legislation.

Meanwhile, stakeholders' support for the RUU P-KS at the engagement level is demonstrated by the input provided for the improvement of the bill. The input mainly concerns the legal substance and legal structure of the bill. In addition, the proposed norms are also expected to create a new legal culture oriented towards fulfilling the rights of victims.



A. Issues Addressed by RUU P-KS

1. The Polemic on Legal Culture

1.1. Legislative Responses to Sexual Violence Reporting

The legal system is considered weak in responding to cases of sexual violence. When a victim decides to come forward, she is overwhelmed by a whole set of challenges, including an unsupportive legal process.⁸⁹ Despite the availability of a special police unit, victims continue to face barriers to justice, both in terms of quantity and quality. The lack of understanding on the issue of sexual violence is reflected in the law enforcement responses who tend to put the blame on the victim, especially if the victim is an adult woman.

When a victim reports her experience of sexual violence to the authorities, the assumption would be that it was consensual. During examination, she would be subjected to a grueling process where questions are repeated over and over again aimed at discrediting the victim, leaving her even more traumatized, feeling as if she has been revictimized. The burden of proof often rests with the victim, and in practice, ignores the contextual nature of the crime, and fails to take into account the victim's side of the story.

During court trial, for example, the victim, who suffers from chronic psychological stress and trauma caused by the assault, is forced to recount her ordeal at the witness stand. The judge would tend to ask repetitive, insensitive questions, such as, "What time were you home at the time of the incident?", "What were you wearing?", "Why did you come home at night?", and many others.

In handing down the verdict, the judge would provide leniency to the defendant if he promises to marry the victim or if, for example, the offender and victim were dating partners. The victim's sexual history also provides the judge reason for imposing a lesser sentence on the assumption that the victim is not a woman of virtue.⁹⁰

Of the few victims who were willing to come forward, far fewer had their cases ruled in their favor. Most cases were discontinued, and end up with the perpetrator walking free. There have also been cases where the victim is sued back by the perpetrator on charges of defamation because the victim does not have sufficient evidence, for example.

The RUU P-KS establishes norms that assert the victim's right to legal counsel and psychological assistance, and thereby minimizing the obstacles impeding the victim from moving through the legal process.⁹¹ It also governs on the criteria of LEA qualified for handling sexual violence cases, which include being human rights and gender sensitive, and having received education and training on sexual violence case handling.⁹² The two provisions in the

89 Interview with Arif Maulana, Director of LBH Jakarta, 19 March 2020.

90 MAPPI FH UI, Executive Summary Penelitian Konsistensi Putusan Perempuan, (Jakarta: MAPPI FHUI, 2019), <http://mappifhui.org/wp-content/uploads/2019/06/Executive-Summary-KS.pdf>, accessed 21 May 2020.

91 Articles 23 and 65 of DPR RI's draft RUU P-KS, 2017.

92 Article 80 of DPR RI's draft RUU P-KS, 2017.

RUU P-KS will at least provide victims encouragement to disclose their experience, without the stigma or stereotyping within the criminal justice process.

1.2. Women's Consent in Sexual Violence Cases

In a sexual violence case, the burden of proof is imposed on the female victim. In the examination of a sexual assault case, the victim must convince the authorities that there was no consent. Meanwhile, the mindset embedded in society's legal culture tends to blame the woman for her own victimization.

"... that is possible if we believe the victim. But we know how society perceives sexual harassment. Women are then blamed for teasing, wearing provocative clothing. This is what the law (RUU P-KS, ed.) should address; to build a mindset that looks at sexual harassment cases in a fair manner." Nur Rofiah, Alimat.

The issue of the female victim's consent in cases of sexual violence poses a dilemma. Consent, which is essentially psychological, must be proven in the physical sense. In rape cases, it will only be considered non-consensual if it can be proven that she has physically resisted the attack, or that the perpetrator has used physical force or violence that leaves her incapacitated. There must be physical evidence that the assault did occur.

In addition, LEAs generally consider sexual violence against adult women as nothing more than a normal sexual activity. Such acts are presumed to have taken place with the woman's consent.

The consensual/non-consensual logic internalized within the legal system completely disqualifies the woman's (sexual) experience. A woman may agree to some form of intimacy, but not to sexual intercourse, or she may have consented to having sex, but not in the way that the partner wants. From a legal approach however, the consent initially given by the woman is usually used to deliver judgment, interpreting it as agreeing to have sex. The logic that is being applied in the legal system is rooted in the phallogocentric ideology.⁹³

An example is the rape case handled by LBH APIK Jakarta in 1999 of an employer against a domestic helper where the public prosecutor has reduced the rape charge to indecent assault. It was argued that no element of violence was found, and that the suspect and victim had known to be in a relationship based on the testimony of a witness who saw them both on a motorcycle before entering a film studio, and a picture of them taken as evidence. The fact that the victim was willing to get on a motorcycle with the suspect was interpreted by the LEA as the willingness to have sex. The assumptions made by the prosecutor completely

93 Carol Smart, *Sociology of Law & Crime, Feminism and The Power of Law*, (London and New York: Routledge, 1989), pp. 33-34. Phallogocentrism refers to the mindset and values that are centered on phallic pleasure. For example, the perception that women to some extent enjoy being raped. A phallogocentric ideology prevents the authorities from making a distinction between rape and sexual relations. This is evidenced by how they respond to incidents of rape perpetrated by people who the victim is close to, or knows.

disregarded existing evidence that had strengthened the case.⁹⁴ Law enforcement's interpretation of consent that disqualifies women's experience of sexual violence remains applicable, starting even from the time the case was first reported to the police.

"It could be a rape case, [Article] 285, and the crime scene is a hotel. Is it possible? In terms of evidence, when she checked in there is a process involved. If we had not followed up with the complaint, it would have gone viral, especially as we would be bringing the matter up to a higher-ranked officer. Whether we want to or not, despite no element of force, we still have to make a police report. But the problem starts when it is brought to the prosecutor's office, for filing and other matters. This is where the problem lies. Meanwhile, in a rape case there must be a threat of violence. When she went to the hotel twice, more than once, it got us thinking, sorry to say this, but we shouldn't be saying "how come you were willing to do it over and over again". As members of the police force, we shouldn't be saying this, as we have always done so. So the difficulty here is that the victim was an adult woman, and the crime scene was a hotel, there was no threat of violence, and the victim herself admitted that it has happened more than once. Sometimes we still face problems. There are also no witnesses as the crime took place at a hotel, maybe the CCTV..." A police investigator during an FGD at Polda Metro Jaya, 19 March 2020.

"It's pretty obvious that if you are invited to a place like that, then you can guess where it is heading. If you are seen at a hotel, and you are not yet an adult, at first glance people would tend to say, "You went to a hotel! What were you doing there? That would be the typical reaction". That is speaking in general, but if you are both adults, and you already know you're heading to a hotel, the term usually used is private room, so what else would you be doing at a hotel? Yes, you are free to go there, and if it's at the lobby, the restaurant, then it's okay. That is what we would be thinking. We have also dealt with other cases like this. The problems are the same if it's a hotel." A police investigator in an FGD at Polda Metro Jaya, 19 March 2020.

The moral approach often used by LEAs, ultimately blurs the line between a consensual sexual activity on the one hand, and rape, which is non-consensual sex on the other hand. A person may agree to have sex, but that does not mean she agrees when it involves violence. The RUU P-KS can help address these issues, providing the clauses on education and training and their implementation are designed to build the capacity of LEAs with regard to consent in cases of sexual violence.⁹⁵

⁹⁴ Ratna Batara Munti, "Kekerasan Seksual: Mitos dan Realitas, Kelemahan Aturan dan Proses Hukum, serta Strategi Menggapai Keadilan," in E. Kristi Poerwandari and Rahayu Surtiati Hidayat (Ed.) *Perempuan Indonesia Dalam Masyarakat yang Tengah Berubah: 10 Tahun Program Studi Kajian Wanita*, (Jakarta: Program Studi Kajian Wanita Program Pasca Sarjana Universitas Indonesia, 2000), pp. 392-393.

⁹⁵ Articles 8 and 80 of DPR RI's draft RUU P-KS, 2017.

1.3. Victim Precipitation

In studies on sexual assault, the concept of victim precipitation was introduced. Victim precipitation can be defined as “blaming the victim for his or her own victimization.” It refers to a situation where the victim is assumed to have agreed to have sex, or to have even given explicit verbal consent or through certain cues or gestures, but then decides to withdraw the consent before sexual contact, and the occasion ultimately leads to forcible sexual intercourse.⁹⁶

An example of victim precipitation is that involving sex workers. Sex workers are vulnerable to sexual violence, yet at the same time are disproportionately stigmatized by society due to the perception that there is no such thing as rape when it comes to sex workers, because they are paid by their clients for sexual services. In reality however, sex workers are often subjected to rape and harassment, not only by their customers, but also by their partners, or even outside of work.

“Yes, I have experienced it (sexual violence) with a client. It was when I was working at an entertainment venue in Jakarta, and the agreement with the client was vaginal intercourse, but in the room I was forced to have anal sex. At the time there was nowhere to run because it was only the two of us in the room, and there was no one to help me. I was new to sex work. It was really terrifying. To me, it’s rape. Physically, my anus was injured. I had rectal bleeding. I object to being treated like that, and I don’t accept it.” Anjani (anonymous), interviewed 2 March 2020.

The RUU P-KS can help address the issue of victim precipitation as long as the provisions on education and training and their implementation contribute to increasing LEA’s understanding of consent in cases of sexual violence, including in providing protection to victims who have been accused of precipitating their own victimization.⁹⁷

1.5. Use of Sexual History

When cases of sexual violence go through the criminal justice system, it often involves the use of the victim’s sexual history as a basis for not processing the victim’s report, or for imposing light sentence, or releasing the perpetrator altogether. For example, when the victim has a history of having had prior sexual intercourse, a medicolegal examination becomes unimportant in identifying possible injuries caused by rape. The LEA would typically disregard the medical examination once it is known that the victim has engaged in sexual activities in the past.

“... the medicolegal examination does not necessarily provide evidence, because in cases where the victim has previously engaged in sexual activities, law enforcement officers would often say, “You do know that you have already had sex before.” It is actually her right, but then what really matters is proving whether the injury is new or old.” Academic, University of Indonesia

96 Topo Santoso, *Seksualitas dan Hukum Pidana*, (Jakarta: IND-HILL-CO, 1997), pp. 37-38.

97 Articles 8 and 80 of DPR RI’s draft RUU P-KS, 2017.

By including sexual history as the basis for consideration, LEAs have denied women access to justice. In the investigation process, bringing up the victim's sexual history as evidence can result in the termination of the investigation.

The use of the victim's sexual history is legitimized in the Code of Criminal Procedure (KUHP). Article 185 clause (6) of KUHP stipulates that in assessing the truth of a witness' testimony, the judge must seriously take into consideration the witness' lifestyle and moral character. The judge should also pay attention to everything else that may have a bearing on the truthfulness of the witness' statement.

A study revealed that the sexual history of victims of sexual violence has consistently been used as a major consideration in handing down a verdict. In proving whether rape did or did not occur, the court would focus on the victim's behavior and sexual history, such as whether she has had prior sexual intercourse with the perpetrator (boyfriend) or with other men. The judge would ignore the facts, the victim's psychological trauma as a result of rape, and the victim's age, who is considered a minor.⁹⁸

The judge's consideration of the victim's sexual history is also indicated in the decisions handed down for repeat rape or multiple rapes, and for single-instance rape. In normative terms, based on Article 65 of the Criminal Code regarding the combination of several offences, where the rapist sexually assaults the victim on more than one occasion may be liable to a heavier sentence of one-third the maximum punishment. However, the research showed the court's inclination to impose a lesser sentence for repeat rape, in contrast to more severe punishment when the victim is a female who has never engaged in sexual intercourse before.⁹⁹

The legal system and its rules of evidence allow LEAs to question a woman's reputation and credibility by bringing up their sexual history, labelling them either as a "good" or "bad" girl. In contrast, the reputation of the male perpetrator has never been called into question. Simply based on the victim's sexual history, the court decides whether the victim's claims are true, and whether the offender deserves a harsh sentence or should even be set free. Such legal mechanisms do not position women as the legal subject, but rather as "the other". If women are truly seen as a subject of law capable of making autonomous sexual decisions, the use of sexual history as evidence becomes irrelevant.¹⁰⁰

98 One of the court verdicts studied was a rape case involving multiple perpetrators (gang rape) against a victim who was unconscious from excessive drinking. The victim suffered trauma, and the medicolegal examination found that the victim's hymen was torn between 9 and 7 o'clock position. However, the judge's decision was based on the consideration that the rape occurred because the victim was viewed as a woman of dubious moral character. The victim was stereotyped as an unvirtuous woman by the judge as she was no longer a virgin, and has been sexually intimate with her boyfriend. The "unvirtuous" label was also attached to the victim because she was intoxicated. Based on these considerations, the judge sentenced the defendant to only 5 months imprisonment, lighter than what the prosecutor sought, which was 10 months in prison. Pursuant to the Criminal Code, rape in fact carries a maximum penalty of 12 years imprisonment. See Siti Lestari, "Analisis Putusan Terkait Riwayat Seksual Korban atau Stereotype sebagai Dasar Meringankan atau Membebaskan Terdakwa," in Lidwina Inge Nurtjahyo & Choky R. Ramadhan (Ed.), *Kekeerasan Terhadap Perempuan Dalam Peradilan Pidana: Analisis Konsistensi Putusan*, (Jakarta: Australia Indonesia Partnership for Justice, MaPPI FH UI, LBH APIK Jakarta, and Badan Penerbit Fakultas Hukum, 2016), pp. 318-319.

99 Dio Ashar Wicaksana & Muhammad Rizaldi, *Asesmen Konsistensi Putusan Pengadilan Kasus-Kasus Kekerasan Terhadap Perempuan*, (Jakarta: MaPPI FHUI and LBH APIK Jakarta, 2015).

100 Rosemary Hunter and Kathy Mack, "The Exclusion and Silence", in Ngaire Naffine and Rosemary J Owens, (Ed.), *Sexing The Subject of Law*, (Sydney: LBC Information Services, 1997), p. 185.

The RUU P-KS strictly prohibits LEAs from discriminating against victims, including in bringing up their sexual history in deciding cases of sexual violence.¹⁰¹ The bill also specifies the criteria and requirements of an investigator, public prosecutor, and judge for handling cases of sexual violence. Mandatory training to build knowledge and skills from a gender perspective is also regulated in the bill with a view to eliminate barriers related to legal culture.¹⁰²

1.6. The Perspective of Service Providers

Even though psychologists are available in some P2TP2As (Integrated Service Center for Women and Children), a number of these service centers have come under the spotlight for the psychologists' inability to support victims. To ensure a victim-centered approach to service delivery, the RUU P-KS must include the need to provide training for service provider personnel, modules, and guidelines for case handling from the victim's perspective. This should be done in line with similar efforts made by LEAs.

1.7. Public Understanding of Sexual Violence

In line with efforts to improve the legal system, it is equally important to build public understanding of sexual violence. One of the challenges concerns the construction of society's mindset that does not see sexual violence from the victim's perspective or the facts of the case. Education on sexual and reproductive health and rights is also not comprehensively available, leading to lack of public understanding of the body and sexuality in order to prevent sexual violence.

Thus, comprehensive SRHR education, which should be provided since early childhood can no longer be postponed. Education for preventing sexual violence should not only be done through formal education, but needs to reach all elements of society, including civil society organizations, religious and *penghayat kepercayaan* organizations, religious leaders, and traditional elders. Comprehensive SRHR knowledge will foster a sense of responsibility in every individual to respect his or her own body and sexuality, and also that of others. Apart from the positive implications of the prevention of sexual violence, such efforts also contribute to curbing child marriage.

The RUU P-KS governs on norms that will serve as the basis for providing education and sensitization programs on sexual violence that should reach all levels of society.¹⁰³ The bill also lays the foundation for the implementation of sexual and reproductive health and rights as part of preventing sexual violence.

101 Articles 63, 67, 73, and 74 of DPR RI's draft RUU P-KS, 2017.

102 Article 80 of DPR RI's draft RUU P-KS, 2017.

103 Articles 6 and 79 of DPR RI's draft RUU P-KS, 2017.

2. Legal Substance

2.1. Weak Material Source of Law in Addressing Sexual Violence

Several laws and regulations on sexual violence are already in place, but still insufficient. These include the KUHP that addresses rape and acts of indecency. However, regulations regarding rape and physical sexual harassment (read: indecent acts as defined in the KUHP) are not comprehensive and contain many weaknesses. The definition of rape for example is limited to the use of violence or threat of violence in general, and carnal knowledge, which is described as penile penetration of the vagina.

In practice, not all reports of rape and physical sexual harassment can be pursued further, especially when elements of the crime were not satisfied. In a rape case for example, an element that must be proven is set forth in Article 285, which describes rape as "...by means of violence or the threat of violence in forcing a woman who is not his wife to have sex with him". Article 285 of the KUHP limits rape only in the context of intercourse that involves violence or the threat of violence between people who are not bound by marriage.

Violence is described as the use of substantial unlawful physical force or power, for example hitting with the hand or a weapon, kicking, and so on.¹⁰⁴ Given the definition, there must therefore be evidence of the use of physical force, and resistance from the victim, as well as the actual act of sexual intercourse which must be proven by the presence of sperm and (or) physical marks of forced entry in the vaginal canal. This leaves out a wide range of other sexually violent acts, including non-penetrative genital contact.

In Article 289 on acts of indecency, the element of violence is similarly interpreted. There must be proof of violence or threat of violence, which is read solely as physical violence in an act of indecency.¹⁰⁵

2.2. Gap in Material Law on Sexual Violence

When a victim elects to come forward, the police investigator would mostly refer to positive law in determining whether a case falls under the category of being a criminal offense. If no regulations are in place to move the case through the criminal justice process, the victim will find it difficult to file a report, even if what she experienced was indeed a sexual assault.

This legal vacuum means that not all cases of sexual violence can be processed through the criminal justice system. Cases like verbal or other non-physical sexual harassment, or sexual exploitation that is commonplace in dating or other relationships, such as on college

104 R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya, Penjelasan Lengkap Pasal Demi Pasal*, (Bogor: Politea, 1996).

105 Article 285 KUHP reads, "Whosoever through the use of violence or threat of violence forces a woman who is not his wife to have sex with him, shall be punished for rape, with a maximum imprisonment of twelve years." Meanwhile, Article 289 KUHP reads "Whosoever through the use of violence or threat of violence forces a person to commit or allow an act of indecency, shall be punished for destroying modesty with a maximum prison sentence of nine years."

campuses, are difficult to prosecute as cases like these have no legal framework to lean on.¹⁰⁶

A legal void is also reflected in the cases handled by LPSK and community-based service providers. The KUHP, which only regulates the crime of rape and acts of indecency, cannot be invoked for non-physical sexual harassment, sexual exploitation, sexual slavery, sexual torture, and internet-facilitated sexual violence. These forms of sexual violence in fact have devastating impacts, and in some cases can even drive a victim to commit suicide.

In handling cases of sexual violence against children, legal gaps were also identified. First, the Child Protection Law only regulates the crime of indecent acts, and not sexual harassment. As a result, confusion arises when a child provides statements, and law enforcement uses the term indecent act for cases of sexual harassment when the two terms are clearly different.¹⁰⁷

Second, the Child Protection Law limits the term exploitation to only mean economic and sexual exploitation, when many cases fall under the category of sexual slavery. Sexual slavery cannot be classified as economic or sexual exploitation, as it goes beyond the two forms of exploitation. A case example is a person with disability who for years was forced to have sex with her father, and brothers. In another case that was more than just sexual exploitation concerns a prostituted child who had to serve 15 clients a night. She was controlled by a pimp, and will be punished if she tries to escape.

“So, in reference to that, we actually want to highlight more on the woman’s situation, and this also includes girls, so that they are more protected in terms of the law through the RUU P-KS. That is what we really want to emphasize more on. Because after all, there is a vacuum, and even if the regulatory reform that I mentioned earlier is ongoing, that will always be there... a problem that is not fully covered in our legislation.” Ai Maryati, KPAI.

A legal void occurs when emerging trends in the crime of sexual violence are not followed by the appropriate legal reform. Existing legal instruments only recognize sexual violence as rape and indecent acts. Meanwhile, other types of sexual violence, such as forced marriage and sexual exploitation, have no legal grounds for punishment.

The following describes the limitations of the law in addressing the different forms of sexual violence:

¹⁰⁶ Interview with Rosmiati Sain, Director of LBH APIK Makassar, 1 April 2020, and Rizqika Arrum Bakti, volunteer at Sandya Institute, in an FGD with youth groups on 24 February 2020.

¹⁰⁷ For example, a child is asked, “Were you molested?” The child will then respond, “What is molested? I was wolf-whistled at, fondled, but not molested”. “But weren’t you touched?” “Oh yes. I was touched.” In dealing with a child, the statements can also be inconsistent (Interview with Ai Maryati, KPAI, 24 March 2020).

Table 2. Limitations of Existing Legislation in Addressing Different Types of Sexual Violence

Type of Sexual Violence	Legal Instrument	Limitation of Legal Instrument
Rape	KUHP Article 285	Limited to intercourse by use of physical violence or the threat of physical violence
Sexual Harassment	Sexual harassment is not covered in KUHP, but acts of indecency are (Articles 289, 290, 294)	Limited to harassment that involves physical contact such as kissing, and genital fondling. Must satisfy the elements of violence or threat of violence; unconscious, physically helpless; molested by a person in a position of trust.
Sexual Exploitation	Law No. 21/2007 on Eradication of the Crime of Trafficking in Persons	Limited to acts for the purpose of human trafficking
Sexual Slavery and Sexual Torture, Forced Contraception, Forced Prostitution	Law No. 26/2000 Human Rights Courts	Limited to crimes against humanity, and 3 elements to satisfy: 1) committed as part of a widespread attack; 2) or a systematic attack; 3) the attack is known to be directed at the civilian population
Forced Abortion	KUHP (Article 347), Health Law (Article 76)	Coercion – physical, targeting the medical worker – difficult in cases of exploitation-- power relations
Forced Marriage	No regulation	

The formulation of the criminal elements for each type of sexual violence will influence the extent to which the issues are covered by the RUU P-KS. This study captures the many inputs offered for determining the sentencing of other types of sexual violence that the bill needs to regulate, and proposes strengthening the criminal elements of sexual violence.¹⁰⁸

2.3. Weak Formal Source of Law on Victim Protection

Barriers to Sexual Violence Case Handling

The RUU P-KS is crucial as part of comprehensive legal reform as it covers six key aspects: a) prevention of sexual violence; b) nine types of sexual violence; c) victims' rights, including recovery; d) the rules of criminal procedure for sexual violence, including the rules of evidence; e) monitoring efforts to eliminate sexual violence; and f) sentencing.¹⁰⁹

The fourth aspect regarding criminal procedure is intended to address the barriers to handling cases of sexual violence. For example, the KUHP does not regulate on the legal representation of victims who generally suffer from multiple levels of trauma, and neither does it govern on the specific procedures for preparing an Investigation Report (BAP), or on the victim's rights as explicitly as the rights of the perpetrator.

¹⁰⁸ See sub-chapter on Inputs for Improving the RUU P-KS.

¹⁰⁹ Komnas Perempuan, Lembar Info Enam Elemen Kunci RUU P-KS, (Jakarta: Komnas Perempuan, 2018), unpublished.

In addition, the criminal procedure as laid down in the KUHAP does not guarantee victim protection, especially in cases of sexual violence. The KUHAP still focuses primarily on the perpetrator, including the rights of the suspect or defendant. It also regulates the rights of witnesses, but not that of victims. The KUHAP makes no mention of the fulfillment of the victim's rights to healthcare, psychosocial services, rights information, rehabilitation, legal counsel, and other entitlements that can facilitate their access to justice.

The legal aid system for victims is passive in nature. This means that the existing law requires the victim to report to the police immediately after the occurrence of the crime that she has experienced. It does not take into account the possibility of the victim being injured, and therefore needing immediate treatment or care. In addition, in the event that the victim needs protection, she is expected to submit a written request to LPSK. This passive system is burdensome to victims of violence in general, especially for victims of sexual violence who have to deal with multiple levels of trauma.

It is hoped that these barriers can be removed through various norms formulated in the chapter governing criminal procedure in the RUU P-KS. Specific provisions in the bill regarding investigation, prosecution and court examination are absolutely necessary.

One Witness is not a Witness

In reality, a victim's report is often not processed, or not provided with a letter from law enforcement confirming receipt of report. This is partly because the LEA considers the case lacking evidence to prove the elements on which the crime can be charged.

In general, cases of sexual violence are difficult to prove as most take place in private settings or secluded locations. Thus, there tend to be no witnesses who may have seen the incident, except for the victim and the assailant themselves.

"The difficult part of the reporting process is when the victim is an adult woman, the sexual assault did not occur openly, in a public space, and therefore no witnesses, clearly the case would be rejected. That's clear, very clear, because when dealing with the victim the police would have their own understanding and perspectives... the victim on the other hand expects protection from the authorities. The case is brought to the police for legal action, give a temporary sense of security. But again, based on the perspective of law enforcement at the time, it was clearly rejection."
Wulan, legal expert, P2TP2A, in an FGD with service providers, 21 February 2020.

In proving a criminal case, apart from eyewitness testimony, other admissible evidence include expert testimony, documents, instructions, and the defendant's statements (KUHAP, Article 184). Pursuant to the KUHAP, a witness is a person who can provide information for the purpose of the investigation, prosecution and trial of a criminal case that he or she heard, saw and experienced firsthand. The victim can therefore become a witness to an incident

that he or she has personally experienced (victim witness).

In practice however, aside from documentary evidence in the form of a medicolegal report, the investigator normally still requires witnesses other than the victim as the victim's statements as witness testimony do not count as evidence.¹¹⁰ Furthermore, the burden of proof is often placed on the victim. These evidentiary barriers ultimately result in failure to bring many sexual violence cases to court.¹¹¹

Giving priority to evidence from witnesses other than the victim shows a hierarchy of evidence. In criminal cases there is in fact no hierarchy of evidence. According to Hiariej, the listing of valid evidence in KUHAP Article 184 is not itemized with numbers 1 to 5, but uses the letters (a) to (e) to avoid giving the impression of an evidentiary hierarchy.¹¹²

The definition of witness has also been broadened through Constitutional Court Decision Number 65/PUU-VIII/2010 dated August 8, 2011. The Constitutional Court describes witness testimonial evidence as the statements made by a witness concerning a crime that he or she heard, saw, and experienced firsthand, by providing the reason for such knowledge, including "a person who can provide information for the purpose of the investigation, prosecution, and trial of a criminal offense, which he or she may not always personally hear, see, and experience."¹¹³

The RUU P-KS should consider the expanded definition of witness in the Constitutional Court Decision as a basis for facilitating the evidentiary process of sexual violence cases, which is not covered in the definition of witness set forth in the KUHAP.

Optimizing the Role of Psychologists in Proving Sexual Violence Cases

An experienced psychologist, or expert in the relevant field should ideally be able to provide testimony in court as an expert (expert testimony). In addition, a letter of certification from a psychologist that provides the results of psychological assessment can also be used to strengthen the victim's testimony (documentary evidence). However, such expert witnesses should not only have expertise in their area of discipline in general, but must have an understanding of the issue of sexual violence, and ideally have experience in handling cases of sexual violence.

The psychologist plays a critical role in proving cases of sexual violence, particularly as not all acts of sexual violence leave physical marks, such as bruises or wounds. In such cases, a medical forensic examination report would not always be reliable evidence. On the other hand,

¹¹⁰ Victim's legal counsel, in an FGD with service providers, 21 February 2020.

¹¹¹ Based on LBH APIK Jakarta's report in case handling in 2019, of the 46 cases of sexual violence against children, only 7 could be processed, and of the 103 cases of sexual violence against adult women, only 8 cases could proceed. The most common reason why cases are dropped is the lack of evidence, especially the absence of a witness. See LBH APIK Jakarta, *Op. Cit.*

¹¹² Eddy O.S. Hiariej, *Teori & Hukum Pembuktian*, (Jakarta: Penerbit Erlangga, 2012), p. 99.

¹¹³ *Ibid.*, p. 103.

all forms of violence involve some form of psychological impact that can be distinguished between an ‘immediate impact’ after the incident, and a more persistent ‘medium and (or) long-term impact’.¹¹⁴

Cases of sexual harassment, sexual exploitation, or other types of sexual violence where power relations come into play, generally do not involve the use of violence. In these cases, the role of a psychologist is very much needed. Likewise, in cases where the victim does not immediately file a report soon after the incident, the role of a psychologist is crucial to establish the occurrence of sexual violence.

“... the role of a psychologist is important to prove a case in terms of psychological assessment, especially if we know the nature of sexual violence where the victim does not report immediately. She will come forward after some time when the physical evidence is less visible, and the psychologist or psychiatrist can therefore provide the evidence.” Psychologist, P2TP2A DKI Jakarta.

However, in practice, not all investigators are willing to insist on a psychological evaluation of the victim, where the assessment report can serve as documentary evidence. If a psychological assessment is indeed required, mostly in child sexual abuse cases, the LEA would tend to refer to an assessment report issued by a psychiatrist.

A psychiatric assessment requires that the victim or perpetrator exhibits symptoms of a psychiatric disorder or has mental health concerns. Not all victims however show psychiatric symptoms. A psychological assessment however does not require the presence of psychiatric symptoms. Psychological evaluation is therefore considered more important than psychiatric assessment because the former can help reveal the victim-perpetrator power relations, the dynamics, and the victim’s state of mind, who has become disempowered, losing all sense of self-control, or a condition known as “bounded rationality”.¹¹⁵

The RUU P-KS can help address the foregoing problem by establishing a psychologist’s assessment report and statements as an expert, as one of the pieces of evidence admissible in cases of sexual violence.¹¹⁶

2.4. Aceh’s Special Circumstances: A Legal Dualism Unfavorable to Victims

Since the enactment of Law No. 11/2006 on the Governance of Aceh, a region that has its own special Islamic court (*Mahkamah Syar’iyah*) vested with the power to not only try civil cases like the Religious Court, but also criminal offenses (*jinayah*). The *Mahkamah Syar’iyah* may use the *qanun* (local regulations) as legal reference for deciding cases, in addition to national laws such as the KUHP.

114 E. Kristi Poerwandari and Ester Lianawati, *Petunjuk Penjabaran Kekerasan Psikis: Buku Saku untuk Penegak Hukum*, (Jakarta: Pusat Studi Kajian Wanita Pascasarjana UI, 2010), pp. 13-14.

115 Interview with Kristi Poerwandari, Psychologist, 7 March 2020.

116 Article 44 of DPR RI’s draft RUU P-KS, 2017.

The problem is that the *qanun*, which serves as the source of criminal law in Aceh, regulates matters differently. The principles are also not in conformity with national law, leading to legal dualism.

An example is Aceh Qanun No. 6/2014 on Criminal Law that addresses adultery and rape. Based on Article 48 of the Qanun,¹¹⁷ the crime of rape is punishable by flogging, or the mere imposition of a fine.

In addition, a victim who cannot present sufficient evidence proving that she was indeed raped, at the same time can also be charged for adultery. If the victim is unable to take the oath of telling the truth in front of a judge, she is punishable by 80 lashes (Article 54).

On the other hand, the rapist may be released by swearing an oath in his own defense for five times. In the oath, the defendant may declare that he did not commit the rape, and that the accusation against him is a lie (Article 56).

The legal dualism that prevails in Aceh ultimately hinders efforts to provide victims with legal remedies, especially cases of sexual violence against children. It also does not solve the problem of sexual violence. In many cases of child sexual abuse, the perpetrator was only punished by caning. If law enforcement were to invoke Law No. 35/2014 on Amendments to the Child Protection Law, a child sex offender may be sentenced to a minimum of five years and a maximum of 15 years imprisonment.

"After the caning, the problem is considered over. He can return to his village. If he has raped or sexually abused 20 children, how would the victims feel to see the person who sexually violated them returning to the village? Then what about the families? They can never bring things back to normal for the victim. As for the perpetrator, "I've been punished, right?" So he'll stay at the village, feeling smug. This doesn't help heal the trauma faced by the victims, their families and so on. We don't see this as solving the problem, especially when a child is the victim of sexual violence." Khairani, Flower Aceh.

In cases of adult sexual assault, it becomes even more complicated because the victim may instead be accused of adultery, and sentenced to caning, similar to the punishment imposed on the perpetrator. This happens when the rape allegation is considered false, or consensual.

"The problem is that in most cases where someone sexually harasses or assaults another person, especially if the perpetrator is close to the victim, it is always considered consensual. So the victim is also punished just like the perpetrator. That is what mostly happens. They completely ignore the unbalanced social relations, and so on. It is also the case when the victim instead becomes the offender. In the end,

¹¹⁷ Article 48 reads: "Whosoever intentionally commits rape shall be liable to punishment by caning for no less than 125 lashes, a maximum of 175 lashes, or a fine of no less than 1,250 grams of pure gold, a maximum of 1,750 grams of pure gold, or a minimum of 125 months, and a maximum of 175 months imprisonment."

they are not even protected as victims. This also often happens in Aceh.” Khairani, Flower Aceh.

Women are left even more vulnerable with the enforcement of various *qanuns* in Aceh. Based on data from Kontras Aceh, since 2011 at least 245 Acehnese women were subjected to violence throughout the time the *qanuns* were applied in Aceh.¹¹⁸

The RUU P-KS is expected to untangle the tangled mess of law enforcement on cases of sexual violence in Aceh. Nevertheless, it is important to comprehensively look into the extent to which this can be done, including the need to revise the Aceh Governance Law, which confers Aceh with the power to determine their own criminal law through *qanun*.

2.5. Access to Safe Abortion and Reducing the Maternal Mortality Rate (MMR)

From a human rights perspective, forced abortion should be prohibited. However, the facts show that there are circumstances where abortion is necessary, especially for victims of rape and other forms of sexual violence, and in the presence of medical indications. The penalties imposed on forced abortion however should not deny access to safe abortion services with a view to fulfill the right to reproductive health of victims of sexual violence, and those with health complications.

However, as long as clauses banning abortion remain in the KUHP, there will still be undesirable consequences. In pursuance of the KUHP, both the person seeking help, and the person providing the help will be penalized. The provider in this case is not only limited to doctors, but also other health workers, including those assisting the physicians. It also applies to the person who brings the woman to the abortion clinic. This is indeed a woeful situation that negates the advances in medical technology.

“The law (KUHP – ed.) was made during the Dutch colonial era because they actually wanted to prevent women from dying.¹¹⁹ Now we have the technology, even for safe abortion, very safe, very cheap, and can be done by women themselves, by just taking pills, but it should be accompanied by education, and information, so it’s possible...” Ninuk Widyantoro, psychologist and executive of Women’s Health Foundation.

118 One of the cases of violence was committed against a woman in Pidie. The woman was beaten by local residents for allegedly committing *khalwat* (an unmarried and unrelated male and female being alone together), and so was her mother. In another case, a girl in Langsa in late 2013 was accused of contravening the *qanun*, as a result of which she was physically attacked, requiring surgery. Never mind justice, the victim was instead asked by the authorities to make peace with the community (the perpetrator). See “Perempuan Aceh Bicara Qanun Jinayat,” *Beritamanado.com*, 21 December 2014, <https://beritamanado.com/perempuan-aceh-bicara-qanun-jinayat/>, accessed 15 May 2020, at 20.31 Indonesian time.

119 Introduced by the Dutch colonial government, the historical backdrop of the KUHP was the social landscape in the middle of war in 1908. The Dutch rulers outlawed abortion in a time when pregnant women were worried of carrying to full term in a war situation, driving them to seek all methods of abortion, including using a clothes hanger with a curved hook for insertion into the vagina. This was a situation that also happened in other places, not only in Indonesia. The stories of women ending their pregnancies in different parts of Indonesia were countless, and the methods used at that time were fatal to women. Owing to spiraling mortality rates due to abortion attempts, the Dutch colonial government eventually banned abortion because at that time there was no method for safe abortion. (Interview with Ninuk Widyantoro, psychologist, and executive of Women’s Health Foundation, 26 March 2020).

Today, even the Netherlands, the country that first drafted the KUHP and was later adopted by Indonesia, has changed its laws, and no longer penalizes abortion. Meanwhile in Indonesia, the criminalization of abortion in the KUHP still stands. The revised KUHP proposed by the government for discussion with parliament also retains the outdated clauses.

Similar to the KUHP, Law No. 36/2009 on Health in principle also bans abortion. Women face imprisonment for having an abortion, except for reasons indicating a medical emergency, or pregnancy as a result of rape that causes psychological trauma (Article 75 of the Health Law). The exemption also requires pre- and post-treatment counseling, and for the abortion to be carried out before six weeks of pregnancy with the husband's consent, except for rape victims, and must be performed by a competent and authorized health worker.

In practice, it would not be easy to meet these conditions because not all adult women, especially girls, who are victims of rape, know that they are pregnant, and if they exceed the maximum duration allowed for an abortion to take place, a criminal charge will be brought against them.¹²⁰ The requirement for an abortion to take place at no more than six weeks into pregnancy makes no sense.

In addition, counselors do not necessarily understand about reproductive health issues, and may instead hold a conservative view of abortion. Rather than provide the required information and services, they unnecessarily lecture the victim by invoking religion.

The criminalization of abortion in both the KUHP and Health Law will drive women to turn to alternative, unsafe abortions. This brings negative consequences to women, which may even lead to their deaths. Unsafe abortion contributes to high maternal mortality rate at 305 deaths per 100,000 live births (Ministry of Health, 2015). PKBI found that between 11 and 30 percent of maternal deaths were attributable to unsafe abortion (2015).

Unsafe abortion methods among others, involve drinking an herbal potion prepared by a traditional midwife who will also perform a massage every two or three days, which causes excruciating pain. Certain traditional healers would insert leaves or other foreign objects into the uterus, or draw on the spiritual energy of a faith healer (male) to terminate a pregnancy. Some midwives would even perform an abortion by prescribing drugs or administering injections. Acupuncturists also provide abortion services, which is too dangerous as it causes hemorrhaging.

Not all who have had unsafe abortions are single women as what society has otherwise led us to believe. Many of them seeking to end a pregnancy are married women. The reasons

¹²⁰A case example of the criminalization of abortion that caught media attention involved WA, a child victim who was raped by her own brother. WA was instead found guilty by the court for obtaining an abortion that was considered in violation of prescribed procedure. She had the abortion more than 6 months into her pregnancy, and there was no pre- and post-procedure counseling. Being a child, she was not aware of her pregnancy, and the abortion was at the behest and intervention of her mother. See for example "Vonis Korban Perkosaan yang Gugurkan Kandungan di Jambi Dikritik Tajam," Voaindonesia.com, 23 July 2018, <https://www.voaindonesia.com/a/vonis-korban-perkosaan-yang-gugurkan-kandungan-di-jambi-dikritik-tajam/4493385.html>, accessed 24 May 2020.

cited for having an abortion include contraceptive failure, getting pregnant again too soon after just giving birth, or has already had enough children, advanced maternal age, economic considerations such as the lack of wherewithal to raise children, or forced by the husband to have an abortion yet could not afford safe abortion services, or to buy contraceptives.¹²¹

“... I think it’s more than just sexual violence, it is violence against women in a systemic manner. They are primarily denying that women are also human beings, who are equal, and have equal rights to everything, including to control their fertility, and if they choose not to be pregnant they should be able to do so. That is how it should be. And if they want to be pregnant, they should also be helped. This is where IVF technology comes in, for example.”

“... the problem is that whether we accept the fact that it kills and harms women. One, in the name of women’s rights, and second, it is harmful, in my opinion. And then we will be seen as murderers. We claim to be big-hearted, what is the proof? All these women, you didn’t care for them. Not to mention the number of women who have died from other causes, such as old age, cancer, and various diseases.”
Ninuk Widyantoro, psychologist and executive of Women’s Health Foundation, interviewed 26 March 2020.

By criminalizing abortion, women will no longer have the freedom to make their own decisions about their reproductive life, and to access the necessary healthcare. Such policy is in violation of women’s sexual and reproductive health and rights, and the underlying principles, including the principle of personhood, which refers to the right to self-determination, and the principle of bodily integrity. The principle of personhood means treating women as the key actor and decision-maker in terms of sexuality and reproduction. The principle of bodily integrity on the other hand means treating the body and its needs, such as health and well-being, as whole, rather than separate functions. It is also associated with the right to security, and control over one’s own body.¹²²

The Declaration of the World Conference on Women in Mexico in 1975 asserts that women have the right to control and own their own bodies, including to not be excluded from enjoying their right to sexual and reproductive capacity. Women have the right to enjoy the full potential of their bodies for health, procreation and sexuality.

Unless there is political will to respect women’s sexual and reproductive health and rights, the senseless deaths of women in childbirth will continue to occur. This is a form of state violence. The state is systematically committing violence, especially by criminalizing abortion, and neglecting women’s access to health services,¹²³ which ultimately puts women at grave risk

121 Saparinah Sadli, et al., Ringkasan Studi Pemantauan Status Kesehatan Seksual dan Kesehatan Reproduksi di 6 Daerah di Indonesia. (Jakarta: Yayasan Kesehatan Perempuan, IRRMA, ARRAW and Ford Foundation, 2008).

122 Sonya Correa and R. Petchesky, “Reproductive and sexual rights: a feminist perspective” in Gita Sen, A. Germain and L. C. Chen (eds.), Population Policies Reconsidered: Health, Empowerment, and Rights (Boston: Harvard University Press, 1994).

123 The MMR study conducted by WRI (Women’s Research Institute) found that in addition to bleeding and eclampsia, women’s death in childbirth is attributable to three types of delays relating to poor access to adequate reproductive health facilities. The three types of delays: First, late in recognizing warning signs and in making decisions. Second, late in reaching a healthcare facility, and in receiving medical assistance. This is also related to the gender dimension as decisions are usually made by the husband or parents. See WRI report, Mencari Ujung Tombak Penurunan Angka Kematian Ibu di Indonesia, (Jakarta: WRI, 2011), p. 5.

of death on a daily basis.

This situation has actually been forewarned by a professor of obstetrics and gynecology from the University of Asslut, Greece in 1997. He said, “Women die not because of an incurable disease. They die because society (and especially the government) has not decided that a woman’s life is worth saving.”¹²⁴

The RUU P-KS is expected to address the issue of women’s sexual and reproductive health and rights. Access to safe abortion and reducing the maternal mortality rate should be given serious attention, and this can be done through deliberations over the bill.

3. Legal Structure

3.1. Lack of Coordination and Synergy between Services

Coordination between service providers and LEAs, especially in terms of victim recovery on the one hand, and the legal process on the other hand, often does not go hand in hand, but in fact tends to collide, which is detrimental to the rights of victims. It is often the case that when a victim is referred to a recovery service facility, while the court process is still ongoing, the victim is assumed to have already recovered as she no longer show signs of trauma.

“...they (LPSK–ed.) said that they were not sure when it comes to the psychologists, who should not be excessively treating the victim when the process is still ongoing. This is where I’m a little confused because when the victim interacts with a psychologist, especially an experienced one, the victim will by then be able to better manager her anger. And this can weaken the case.” Kristi Poerwandari, psychologist.

The victim has the right to immediate support towards recovery, but if it compromises the legal process a better solution needs to be found so that the two interests do not come into conflict. This should not be a problem if victims have access to integrated services or a one-stop crisis center, especially for traumatic events such as rape, as is the case in many other countries.

At the Rape Crisis Center in Santa Fe, U.S., services available to victims are provided under one roof, where the interconnected medical treatment, psychological intervention, and legal counsel units can be accessed within the same building. LEAs on the other hand would occupy a room that is connected to the psychological assessment facility via CCTV.¹²⁵

Indonesia still uses the referral system, and as such victims have to visit different locations in order to access different services. In addition, policies that limit the scope of service providers in the delivery of services further create a whole set of problems. For example, P2TP2A can only provide services to clients based on where they live, and where there are

¹²⁴ Ibid.

¹²⁵ Ratna Batara Munti, study visit report to several US states in 2008.

budget constraints, services are limited to only a few days. If a victim lives in Jakarta but was assaulted in Maluku, will she be able to access P2TP2A services in Maluku or must she return to Jakarta? If a victim needs to stay longer in a safe house, where should she go when the duration of stay is up? If recovery services are constrained by the bureaucratic and administrative system, it will impede victims from accessing government services.

Furthermore, victims would have to repeatedly recount their ordeal to service providers and investigators who have different purposes for examining the victim. In cases where the victim is too distraught to give an account of what happened to the police, she would be referred to a recovery service provider. The risk however is a delay in the legal process, or possible loss of evidence.

Ideally, an investigator can refer to the results of the psychological assessment at the initial meeting with the victim, and need not wait until the end of the recovery process. An initial examination can provide the basis for processing the case immediately. The investigator need not reexamine the victim with the same questions, but for the purpose of preparing an Investigation Report (BAP) the investigator may carry out further examinations to clarify the victim's statement. This issue is addressed in the RUU P-KS in the hope of ensuring a smooth victim recovery and case handling process.¹²⁶

In addition, a psychological evaluation of the victim must be done in the name of justice. Once a report has been lodged, the investigator will request a psychologist or psychological service center to examine the victim's psychological condition. If this is regulated in the bill, the investigator has the power to authorize the psychologist to examine the victim, instead of expecting the victim to seek out such services on their own.

3.2 Case Information from Law Enforcement Agencies

In an incest case, the survivor's parents spoke of an inept legal structure in handling the case, making it difficult to obtain any certainty on whether it will proceed to court. As no updates on the case were available, the parents on several occasions had to personally visit the LEA.

"If there is no news, I'll find out. If there is no progress from the police, I'll go there. If still no progress on the P21 form at the prosecutor's office, I'll be there. What is the problem? I'll report to the Supreme Court! I did file a report, and the P21 form was finally finalized, and the case can be brought to court. "

"... What is this, from the time of the incident in January until the court hearing in November? Around November or December, almost the end of the year." I, mother of an incest survivor.

¹²⁶ Article 61 of DPR RI's draft RUU P-KS, 2017.

The RUU P-KS is expected to help solve this problem by establishing procedural rules that are not covered in the KUHP. This includes clauses specifying an information mechanism to ensure victim's access to updates on their cases throughout the criminal justice process.

3.3. Optimizing Support for Victim Recovery

The RUU P-KS imposes a mandate on the government to provide supporting infrastructure in handling cases of sexual violence, such as shelters and safe houses. The preparedness of the national and local governments in this respect continues to be an issue. This is because not all regions have adequate infrastructure, including shelters and safe houses, which meets the highest standards.¹²⁷ This is also the case for other types of support, such as service providers, psychologists for conducting assessments and improving the mental health of victims, vehicles used as part of victim services, forensic DNA testing and others.

For the effective recovery of child victims of sexual violence, more and better rehabilitation facilities and social workers are needed. At the national level, there are eight social rehabilitation centers located in several provinces. They provide rehabilitation services to child victims of sexual violence and children in conflict with the law, where each requires specific handling. For child victims, rehabilitation must be comprehensive and more specific, for example, for the recovery of the child's sexual and reproductive health.

In addition, not all centers are adequately equipped. Social workers must also attend to more than one child at a time. These centers need to be optimized in order to ensure the realization of children's rights, for example through integration with a child-friendly education system. Services should be improved by providing a more diverse range of facilities and programs to avoid concentrating on a single activity such as sewing.

As rehab centers are only available in eight provinces, service delivery for child victims of sexual violence is far from optimal. In situations where the child lives in an area where no such facilities can be found, he or she would have to go to a province where one is available. This problem should not be taken lightly. Hence, the urgency of similar services available not only at the provincial level, but also in districts and cities, which would be more reachable to victims.

Recovery services should not only be available to children, but also adult victims of sexual violence. If such services are inaccessible, victims, who are generally women, will find it hard to heal from their trauma and sufferings, to regain their mental health and reclaim a normal life. They will be vulnerable to a whole array of social problems, such as alienation from social life, and falling into poverty.

¹²⁷ Shelters and safe houses should ideally have separate buildings for male and female victims, but with a wider and larger space for women, especially for accommodating a larger number of people. A complete range of facilities, such as a sports hall, multifaith prayer room, gardening and farming facilities, and skills training room, should be made available so that victims are kept occupied. (Interview with Rahayu Saraswati, Member of DPR RI for 2014-2019, 2 March 2020).

In practice, service delivery should take into account the different needs of child and adult victims. Victim recovery services should be provided by both the central and local governments.

If the RUU P-KS is eventually passed, the central and local governments can work in concert toward addressing this issue. Both at the national and local levels, the government needs to prioritize making sure that supporting infrastructure and facilities are available for the recovery of victims.

3.4. Budgetary Support for Legal Aid and Victim Recovery

State-run service providers such as P2TP2A—now operating as UPTD or local implementing units—as well as community-based service providers should be supported with adequate funding from the central and local governments. Non-government legal aid providers, such as LBH APIK, have been handling pro bono cases at no cost to the victim. These providers cover their costs through cross subsidy, and therefore allowing them to continue handling cases.

Adequate funding accessible to non-government service providers is therefore key to ensuring victim's uptake of legal assistance and recovery services. The RUU P-KS should make it an obligation for central and local governments to facilitate community-based service providers in the delivery of legal aid and recovery services for victims.¹²⁸ Apart from funding support from the central and local governments, such services should also be financed from the village budgetary funds.

B. Regulating the Crime of Sexual Violence in RUU P-KS

In addition to a proposed formal law oriented towards fulfilling the rights of victims, the RUU P-KS has also made a huge step forward in regulating the different forms of sexual violence. The nine types of sexual violence regulated in the bill are sexual harassment, forced contraception, forced abortion, forced marriage, rape, sexual exploitation, forced prostitution, sexual torture and sexual slavery.

It is crucial to regulate all nine types of sexual violence in the bill, considering that their formulation is based on facts regarding sexual violence. To date, there are no specific provisions that cover the nine types of sexual violence.

This study captures inputs for the formulation of certain criminal elements in the bill. In several recorded entries, debate would ensue when discussions become increasingly subtle. The study also identifies the need to formulate other types of sexual violence that are not recognized as a criminal offense.

¹²⁸ An example of a proposed norm: The national and local governments have the obligation to facilitate community-based service providers in offering legal aid and/or recovery services to victims.

1. Non-Physical Sexual Harassment: Importance of Regulation and the Overcriminalization of Sexual Harassment

Sexual harassment is defined as unwelcome attention, or in legal terms, is the “imposition of unwelcome sexual demands or the creation of sexually offensive environments.”¹²⁹ Sexual harassment is still not recognized in criminal law.¹³⁰ In the KUHP,¹³¹ sexual harassment differs from an indecent act that tends to involve sexual intercourse. Sexual harassment on the other hand does not always lead to intercourse, but is more about making suggestive comments about a person’s face, thighs, and buttocks, wolf-whistling, and others. It ranges from the most subtle forms to indecent or sexual acts.¹³²

The spectrum of sexual harassment includes all acts that lead to unwanted sexual attention and often involves an unbalanced power relationship between the perpetrator and victim. Catherine McKinnon defines sexual harassment as all forms of (sexual) attention that are carried out because of an unequal power relationship between the perpetrator and victim.¹³³

Although sexual harassment falls within the scope of the RUU P-KS, there is still debate on the issue of non-physical sexual harassment, which ranges from verbal harassment to whistling and inappropriate staring.¹³⁴ In the deliberation of the bill, the formulation of non-physical sexual harassment was one of the controversial issues as attempts to regulate something considered impossible to measure, especially as a criminal offense, is seen to be far too excessive.

Meanwhile, incidents of non-physical sexual harassment continue to occur. An example is the case of Baiq Nuril, which had gone viral on social media and drew widespread public attention.¹³⁵ Baiq Nuril came forward about her experience of verbal sexual harassment, but investigations were later terminated by the NTB Regional Police on the grounds of “insufficient evidence to support the alleged offense”. This reflects a legal vacuum that needs to be addressed to ensure that victims are protected.

129 Deborah L. Rhode, *Justice and Gender*, (Harvard: Harvard University Press, 1993), p. 231, as excerpted by Nursyahbani Katjasungkana, *Kasus-Kasus Hukum Kekerasan Terhadap Perempuan: Sebuah Drama Tentang Patriarki dan Dominasi Laki-Laki*, (Jakarta: LBH-APIK Jakarta, 2002), p. 25.

130 The term sexual harassment itself first came up in 1988 during a seminar on harassment against women, which was held by FISIP UI in collaboration with Kalyanamitra and LBH APIK Jakarta.

131 An indecent act in the KUHP is described as any act that violates decency or any heinous act that relates to sexual desire, such as kissing, genital fondling, breast groping and so on. Intercourse also falls within this definition, but in the law it is mentioned separately.

132 Interview with Nursyahbani Katjasungkana, Board of Trustees, Indonesia LBH APIK Association, 1 April 2020.

133 Nursyahbani Katjasungkana, *Op. Cit.*, p. 28.

134 In the draft RUU P-KS, the explanatory note on sexual harassment under Article 12 clause (1) reads, “Non-physical acts cover but are not limited to: a. whistling, winking; b. Movements or signals or gestures that exhibit or touch or fondle the genital; c. utterances or commentaries of a sexual nature or propositioning for sex; d. showing pornographic materials; and e. secretly taking photos of or peeping upon another person.” (See Baleg version of the draft RUU P-KS 2017. Right up to the end of the DPR term office for 2015- 2019, the draft bill was still not discussed or approved by parliament).

135 Baiq Nuril was subjected to verbal sexual harassment since mid-2012, perpetrated by the principal of the SMAN 7 Mataram high school, where she works as a contract teacher. The victim, who was harassed via unwanted phone calls, was instead sued back by the perpetrator for sharing the recorded conversations, even though she had nothing to do with it.

See for example “Polisi Hentikan Pelaporan Baiq Nuril Soal Pelecehan Seksual,” *cnnindonesia.com*, 18 January 2019, <https://m.cnnindonesia.com/nasional/20190118143956-12-361923/polisi-hentikan-pelaporan-baiq-nuril-soal-pelecehan-seksual>, accessed 21 May 2020.

Catcalling and Non-Physical Sexual Harassment

A form of non-physical sexual harassment that has become a hot topic of conversation, especially among young people, is catcalling. Catcall is literally defined as a whistle, but it can entail verbal expressions or utterances.¹³⁶ Other forms of catcalling are honking the car horn at a passing woman for no reason, teasing, and making sexual remarks at an unknown woman on the street, such as: “Hi beautiful, where are you going?” or other verbal flirting, and particularly when it is done while laughing with a group of friends, leaving the victim uncomfortable and annoyed.¹³⁷ Catcalling can also involve sexual teasing and advances, or invitation to sex.

In addition to catcalling, another form of non-physical verbal sexual harassment that became a much-talked about issue is body shaming of a sexual nature. Meanwhile, non-physical, non-verbal sexual harassment includes leering intently at intimate body parts such as the breasts or buttocks, ogling, peeping into or under a person’s clothing, peeping on someone in the restroom, and secretly taking pictures of another person.¹³⁸

The Pro-Women National Legislation Program Network (JKP3) has made a list of acts identified as non-physical sexual harassment. They include stalking, stealing or using items belonging to the victim, such as underwear, for sexual pleasure, making the victim undress partially or completely, sniffing the victim for the purpose of sexual gratification, sexually teasing or seducing, including propositions.¹³⁹

136 For other forms of non-physical sexual harassment besides whistling that female garment factory workers have experienced, see Perempuan Mahardhika, *Pelecehan Seksual dan Pengabaian Hak Maternitas pada Buruh Garmen: Kajian Kekerasan Berbasis Gender di KBN Cakung*, (Jakarta: Perempuan Mahardhika, 2017).

137 “7 Hal Seputar Catcalling yang Paling Sering Ditanyakan,” *Womentalk.com*, 29 November 2019, <https://womentalk.com/news-update/articles/7-hal-seputar-catcalling-yang-paling-sering-ditanyakan-yaNIO>, accessed 21 May 2020. See also “Catcalling Adalah Pelecehan Bukan Semata Canda,” *Beritagar.id*, 8 October 2017, <https://beritagar.id/artikel/gaya-hidup/catcalling-adalah-pelecehan-bukan-semata-canda>, accessed 21 May 2020.

138 Participants of an FGD with young persons, 24 February 2020, and interview with Anindya Restuviani, *Hollaback!* Jakarta, 21 March 2020.

139 JKP3, *Booklet Mengapa DPR dan Pemerintah Harus Segera Membahas dan Mengesahkan RUU P-KS Vol. II*, (Jakarta: JKP3, 2018), p.37. See also the List of Issues (DIM) for the RUU P-KS—the civil society’s version—which was initiated by JKP3 and jointly prepared with other civil society groups.

Table 3. Type and Description of Non-Physical Sexual Harassment

No.	Type of Conduct	Description
	Verbal (expressions, utterances, sounds, orders, and the like)	<ul style="list-style-type: none"> • Catcalling: whistling, honking the car horn at a woman on the street for no reason, flirting and making sexual remarks at an unknown passing woman, such as: “Hi beautiful, where are you going?” • Sexual teasing and advances • Sexual propositions
	Non-verbal (any act carried out through an intermediary or medium, or through bodily gestures, or not)	<p>Using any part of the perpetrator’s own body:</p> <ul style="list-style-type: none"> • Staring or gazing without the victim’s consent, whether openly or secretly. Examples: leering intently at intimate body parts such as the breasts or buttocks, peeping into or under a person’s clothes, peeping on someone in the restroom • Sniffing the victim for sexual gratification. It can entail physical sexual harassment if there is physical contact between perpetrator and victim. • Performing sexual acts in front of another without his or her consent. Example: indecent exposure of the genitals while fondling them. • Stalking • Suggestive gestures as invitation to sex • • Use of intermediary or medium: • Displaying something of a sexual nature without the victim’s consent. Example: pornographic videos or recordings, exhibitionistic behavior, etc. • Secretly taking pictures of another person • Stealing or using items belonging to the victim, such as undergarments for sexual pleasure
	Verbal and non-verbal, in certain cases also involve physical sexual harassment	<ul style="list-style-type: none"> • Asking the victim to disrobe partially or completely, followed by non-verbal actions such as ogling the victim or lifting the victim’s clothes

Impact of Non-Physical Sexual Harassment

Although non-physical sexual harassment is often played down, this does not mean that the impact felt by the victim should be taken lightly. Catcalling for instance can affect the victim’s everyday life. When someone passes through road A for example, and is subjected to catcalling, it is likely that she will not take the same road the next day, because she feels threatened. She may then choose to take a longer and perhaps quieter road, and therefore leaving her vulnerable to other types of sexual violence, or may even have financial consequences as she has to pay more for travel costs, and arrives late due to a longer distance.¹⁴⁰ In a particular incident that took place in Kayumanis, East Jakarta in 2019, a female student was hit by a train as she was walking along the railroad tracks, because she was trying to avoid the road she normally used, where she was constantly harassed by a group of people.

Rohan Collier (1998) highlights on the broad impact of sexual harassment, both verbal and non-verbal. Sexual harassment may diminish a woman’s sense of identity, making it difficult for her to concentrate at work or school, and may lose self-confidence. According to Collier, there is a clear correlation between a woman’s experience with sexual harassment and the

¹⁴⁰ Interview with Sophia Hage, doctor, 5 March 2020.

perpetrator's exertion of power. The perpetrator tries to assert his superiority through actions that may imperil the woman's very existence. Sexual harassment is a power play that inflicts deep wounds on the victim.¹⁴¹

Sexual harassment is part of sex discrimination in general, and therefore when a man is harassed by a woman it will not be seen in the same light as when it happens the other way round. Although a man may be harassed by a woman, it will not be perceived as a form of discrimination. Harassment against women however is associated with a broader picture of how women in general are treated in society.¹⁴²

Legislative Challenges and Opportunities

For subtler forms of catcalling, it would be more difficult to regulate. Whether or not it needs to be regulated, and how it should be formulated if regulated, are issues that have incited intense debate when discussing how sexual harassment should be governed in the RUU P-KS.

The first feedback on this issue does not see the need to regulate non-physical, verbal sexual harassment. This is based on two reasons. First, it is difficult to measure and define. Second, society still has a long way to go before accepting catcalling as a form of sexual harassment.

"... I don't think there is a clear measure for verbal violence. But with physical violence, as mentioned earlier, I think it can be done. As for verbal violence, the definition may be too broad.... like catcalling, it's really unnecessary, right? Especially as no one can really define what it is until now. So, what should it be? We cannot make rules based on something that cannot be defined. So, it's better to not include it." Cania Citta, influencer.

The aforementioned formulation issues will result in ambiguous formulas. There is concern that it may lead to the criminalization of victims, as is the case with the UU ITE (Electronic Information and Transactions Law), which has in many instances been invoked to punish the victim.

Besides being difficult to measure, catcalling and recognizing it as a criminal offense may mean that many could be charged for the crime. Hence, the concern for prison overcrowding. This is understandable as discussions over the rule of law would always be associated with legal sanctions.

The second input is in favor of regulating non-physical sexual harassment. Two reasons were

141 Rohan Collier, *Pelecehan Seksual: Hubungan Dominasi Mayoritas Dan Minoritas*, (Yogyakarta, Tiara Wacana Yogya, 1998), p. 45.

142 Ibid.

given. First, it would mean formally recognizing the act as sexual violence, which is strictly prohibited. Second, it provides legal grounds for the government and other stakeholders to take preventive measures, for example the education sector educating the public, and LEAs taking a more serious approach in handling cases of sexual harassment.

Although it would not be easy to measure or define verbal sexual harassment, such as catcalling, several countries, such as Portugal, United States, Argentina, Canada, New Zealand, Belgium, Netherlands and the Philippines, have managed to issue regulations that prohibit catcalling, and other forms of verbal street harassment. In the Philippines, for example, penalties range from one to 15 days in prison, and (or) a fine of 200 up to 1,000 pesos.¹⁴³

As such, in defining acts that constitute sexual harassment, two aspects should be factored in—the impact on the victim, and the intention of the perpetrator. In the event that the impact on the victim is not entirely visible, determining whether an act can be categorized as sexual harassment should be based on the perpetrator’s intent that is beyond what is considered appropriate.

“So what’s the perpetrator’s intent, ‘no, I’m just having fun.’ Maybe the intention should be seen from how appropriate it is in general. Because it would be inappropriate for a boss to proposition his subordinate. So the intention is assessed from the level of appropriateness in general, and/or the impact....either one or both. Both would be even clearer.” Kristi Poerwandari, Psychologist.

Sanctions for Non-Physical Sexual Harassment

If non-physical sexual harassment is regulated in the RUU P-KS, the remediation of cases of sexual harassment should consider more about taking the non-judicial approach—restorative justice—and educating the public. Even so, the option of resolving such cases through court should remain open based on the gravity of the offense, and the impact on the victim. For example, when a boss shows pornographic content to his female staff, making her feel uncomfortable, and the initial mild impact may then become worse. She may start to feel fearful or have nightmares, feel disgusted with herself, or lose interest in sex if the victim is married, thereby disrupting sexual relations with her husband.¹⁴⁴

2. Penalizing Pimps and Clients: Forced Prostitution vs Prostitution Ban

In discussions on forced prostitution as a type of sexual violence regulated in the RUU P-KS, the ongoing debate concerns whether the bill should only be limited to forced prostitution or should impose a complete ban on prostitution? Inputs for a prostitution ban are based

¹⁴³ “Jangan Pernah Goda Cewek 6 Negara Ini akan Menghukummu,” *Idntimes.com*, 18 May 2017, <https://www.idntimes.com/news/world/amp/rizal/jangan-pernah-goda-cewek-6-negara-ini-akan-menghukummu>, accessed 21 May 2020. See also “Gaya Hidup Manila Resmi Melarang Catcalling,” *Beritagar.id*, 10 July 2018, <https://beritagar.id/artikel/gaya-hidup-manila-resmi-melarang-catcalling>, downloaded 21 May 2020.

¹⁴⁴ Interview with Kristi Poerwandari, 7 March 2020.

on the argument that prostitution itself is a form of violence—regardless whether it involves coercion or not. It is therefore suggested that the word “forced” in forced prostitution be removed. In addition, as the Indonesian society identifies itself as part of the Eastern culture, this suggestion also takes into account the fact that most sex workers to begin with did not want (are forced) to become sex workers.

Hence, the importance of the RUU P-KS to provide protection for sex workers, who will then be able to say that they were indeed forced to do it. A prostitution ban in the bill also provides legal grounds for punishing not only pimps, but also sex buyers. The bill should avoid double standards for sex workers, where on one hand it seeks to spare women from prostitution, yet on the other hand leaves pimps and clients untouched. Banning prostitution should therefore be accompanied by a way out for sex workers to access decent work.¹⁴⁵

Conversely, other views emphasized on the consequences of a prostitution ban, which could be even worse. If designated prostitution tolerance zones were to be closed down, it will push the industry underground, and therefore would be more difficult to control. Clandestine prostitution closes off sex workers’ access to protection, and their clients would be less able to protect their health, especially against HIV/AIDS and STIs.

“Around the 3rd or 5th century, a leading church figure named Augustine saw prostitution as an outlet to give vent to carnal desires, and therefore to let it be. Is that a sin? Yes it is. But it is better for him to misbehave there, wallowing in his own sin, between him and God, than to defile his family, or immediate surroundings.”
Gomar Gultom, Chairman of PGI.

Setting aside the debate over forced prostitution or prostitution ban, from the sex worker’s perspective, what is more important for them is guaranteed protection from the state to avoid being criminalized, and therefore the ability to exercise their right to feel safe. Prostitution is essentially a direct impact of the state’s failure to protect the people’s economic rights, particularly the right to decent work and a decent living. Commercial sex workers are also the victims of unfair economic and social systems, and either way, they expect to be treated as individuals with the right to self-determination.

For sex workers, being forced into sex work is tantamount to violence, which means the absence of any form of consent, and includes the exploitation of another person for personal gain. For example, sex workers are exploited by their pimps or owners of entertainment establishments without being given their rights. It is not considered forced prostitution when the sex worker has bargaining position. For instance, she works independently without any pressure or threat, and can make her own life choices, including in negotiating condom use with clients, and setting her own prices, and the type of services offered. According to them, there is no violence within those spaces, and therefore cannot be criminalized from the standpoint of the sex worker or client.

¹⁴⁵ Interview with Rahayu Saraswati, Member of DPR RI for 2014-2019, 2 March 2020.

In many cases, prostitution is inextricably linked to human trafficking. Girls are sold off by their parents to brothels, and find themselves trapped in the business, as they were forced or fooled into sex work with no clue about the deal made with their families.¹⁴⁶ On the other hand however, some have entered the sex trade on their own accord, mainly driven by the desire to earn relatively higher income over a short period of time (instant money).¹⁴⁷ It therefore cannot be generalized that all prostitutes are victims, just as it cannot be assumed that all prostitutes work voluntarily.

The KUHP does not outlaw prostitution, and neither does it punish the sex worker. Profiting from any act of obscenity by a woman or living on her earnings (Article 506, KUHP) however is prohibited, and so is any situation where a person makes an occupation or a habit of intentionally causing or facilitating any obscene acts by others (Article 296, KUHP). Under these provisions, the *souteneurs* or pimps, madams, call-girl business owners, and prostitution intermediaries are the ones who should be penalized.¹⁴⁸

Indonesia's penal regime (KUHP) that singles out pimps rather than sex workers is consistent with the International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.¹⁴⁹ Regulating the crime of forced prostitution or prostitution in the bill therefore should pay more attention on preventing the criminalization of sex workers.

3. Ending the Criminalization of Health Workers and Protecting Persons with Disabilities in Forced Abortion and Forced Contraception (Sterilization)

The regulation of forced abortion and forced contraception through the RUU P-KS will push health workers into a predicament. The formulation of the two types of sexual violence is considered to have not taken the experiences and perspectives of health workers into consideration, putting them at risk of criminalization.

A health worker shared his own experience of facing a mother who requested an abortion for her mentally disabled daughter. Owing to feeling overwhelmed as a caregiver, she had to admit her daughter into a psychiatric hospital, who due to lax supervision would often go missing for up to two weeks, and was consequently impregnated.

¹⁴⁶See for example Louise Brown, *Sex Slaves: The Trafficking of Women in Asia*, (London: Virago, 2001).

¹⁴⁷Terence H. Hull, et al., *Pelacuran di Indonesia: Sejarah dan Perkembangannya*, (Jakarta: Pustaka Sinar Harapan & The Ford Foundation, 1997), p. 110.

¹⁴⁸Ibid., p.24.

¹⁴⁹The original copy of the convention can be accessed through the following link: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/TrafficInPersons.aspx>, accessed 20 June 2020, at 4.27 Indonesian Time. The convention was approved by the United Nations on December 2, 1949, which combines 4 conventions on trafficking in persons, and came into effect since July 25, 1951. In Article 1 of the Convention, parties to the Convention agree to punish any person, who to gratify the passions of others: 1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; 2) Exploits the prostitution of another person, even with the consent of that person; 3) Keeps or manages, or knowingly finances or takes part in the financing of a brothel; 4) Knowingly lets or rents a building or other place or part thereof for the purpose of the prostitution of others. Under the convention, the sex worker's consent is not an issue. The assumption is that the sex worker is the victim, regardless of whether it was of her own accord or not. The convention basically sees prostitution as part of trafficking in persons. See Alex Irwan, *Perisai Perempuan: Kesepakatan Internasional untuk Perlindungan Perempuan*, (Jakarta: Asosiasi LBH APIK Indonesia, 1996), p.5.

An assessment showed that the child was unable to think and remember things, and therefore would not have the capacity to take proper care of her newborn if the pregnancy were to be carried to full term, and also taking into account fetal health and development. Not to mention the likelihood of a mother with below-average intelligence to pass on her condition to her child. Given these considerations, with permission from the Indonesian Medical Association (IDI), the pregnancy was terminated. IDI even allowed the sterilization of the girl in question.

For this particular case, there was more than one decision-maker. It was a collective decision made by an Ob/Gyn and a prominent religious figure (at the time, Gus Dur's opinion was solicited). It also involved counseling with the parents and nurses in attendance. Meanwhile, the girl was talked through her situation.

"..It cannot be forced, but it must be explained. If she cannot digest the information, then whoever takes care of her, the parents, family, or counsel, must be informed. It's not an easy decision, we have to really discuss it. What type of counselling is needed, the pros and cons, what happens next. So it's not just thinking about the girl, but her own offspring as well. That is how we should think. Who will take care of the baby, if for example the grandmother dies, and the child is too young. Everything needs to be taken into consideration, and must be specific." Health worker in a non-governmental organization.

Making decisions on abortion and sterilization for particular groups are certainly not easy. Besides involving many concerned parties, decisions are made on a case-by-case basis, and cannot be generalized. From the health worker's perspective, forced abortion should be banned, but a woman who with good reason may need an abortion should not be prevented from having one.

From the Disability Perspective: Stigma, Parental and Social Pressure

In cases of the forced abortion and sterilization of women with disabilities, from their perspective, the decision should indeed rest with them. In reality however, there are people who would try to wrest control over women's own bodies, on the assumption that women with disabilities are incapable of making their own decisions. This among others is due to uninformed parents and society. Women with disabilities are considered unfit mothers, who will only create problems for their parents.¹⁵⁰

In practice, sterilization as an open option could lead to one-sided decisions, if the woman with disability and her family is not first consulted. It may take up to 1-2 months to talk the matter through, making sure that the victim is consulted first to allow her to make informed

¹⁵⁰ In HWDI findings (2014), a local government-owned care home for people with mental disabilities administered medication and/or IUDs to female residents without their knowledge. Meanwhile, in a Human Rights Watch report (2016), 3 social care institutions (2 government-owned, 1 privately-owned) were found to have given women with mental disabilities birth control shots without their knowledge and consent, which they were told were vitamin injections. The injections were also administered to virgins, citing the risk of them attracting the opposite sex as reason. If these women were to resist in anyway, they would be threatened with being sent to isolation. See Booklet JKP3, Op. Cit., p. 57.

decisions about her own body.¹⁵¹

Inputs on Improving the Formulation of the Crime of Forced Abortion

The ban on forced abortion and forced contraception (sterilization) should be geared at protecting all persons with disabilities. Legislation should target the perpetrators who commit the crime without the victim's full knowledge and consent. On the other hand however, the formulation of both offenses should avoid criminalizing health care workers who are performing the abortion according to the proper procedures.

The element of persuasion in the formulation of this crime should not be used against health workers providing pre-counseling and counselling, which is a key requirement before an abortion and sterilization can be performed. In addition, the formulation of the crime of forced abortion must also explicitly delineate the boundaries between the criminal and non-criminal elements.

The element of informed consent establishes the line that separates forced abortion from voluntary abortion. The Health Law exempts abortion in cases of rape or for medical reasons, and this should also extend to all types of sexual violence that result in unwanted pregnancy.

Formulation of the Crime of Forced Contraception

The formulation of the crime of forced contraception in the RUU P-KS needs to clearly establish the boundaries of criminal elements to make sure that it is not counterproductive to efforts aimed at preventing STIs and HIV/AIDS. An example is a man living with HIV/AIDS whose wife insisted that he uses a condom. This does not constitute forced contraception as it is part of the sexual and reproductive health and rights of each partner. In addition, informed consent should also be formulated as a condition for a person seeking contraception or sterilization in order to not be considered a criminal offense.

Another input that emerged in discussions on this particular crime concerns the prohibition of contraceptive use that denies a person the ability to exercise his or her right to reproductive health. The Health Law limits contraceptive use only to married individuals with permission from the spouse (husband). It is hoped that regulating the crime of forced contraception in the RUU P-KS will allow for changes to provisions limiting access to contraception set out in other laws.

4. Special Regulation on Cyber Sexual Violence

Special provisions related to cyber sexual violence were put forward for inclusion in the bill, considering that the locus of this crime is different from that of other forms of sexual violence. Given the distinct nature of cyber sexual violence, responding to this phenomenon

¹⁵¹ P2TP2A in DKI Jakarta had dealt with a rape case involving a woman with intellectual disability and speech impairment. In efforts to identify the perpetrator, a DNA test was performed, and assistance was provided to the woman until childbirth. As her parents were poor, she was placed in a care home where it was recommended that she was sterilized. P2TP2A refused to be the messenger, and insisted that the care worker speak to the parents and victim herself. This is a particularly distressing situation as it happened in DKI Jakarta, the country's capital city, leaving open the possibility that it can also occur in other regions with even worse outcomes. (Vitria Lazzarini, in an FGD with service providers, 21 February 2020).

also requires a specific approach.¹⁵²

Recent advancements in information technology have broadened the locus of sexual violence beyond the real world to now extend to the virtual spaces. The unique dimension of information technology means that a different approach is required in responding to this particular type of violence.¹⁵³ Based on the experience of a counsel to a victim of revenge porn, the need for swift action in pursuing cases is not accompanied by efforts to ensure victim's empowerment and recovery. Revenge porn victims first and foremost are concerned about how to break their relationship with the perpetrator.¹⁵⁴

It is hoped that the RUU P-KS can address cyber sexual violence, and therefore provide the legal basis for the delivery of recovery services to victims, and laying down the procedural rules for the specific handling of cases. The inclusion of this issue in the bill is also expected to open up discourse on revising the UU ITE.

5. Ban on Practices Harmful to Sexual and Reproductive Health

Practices that harm women's health, such as female circumcision¹⁵⁵ or FGM/C,¹⁵⁶ *sifon*, and child marriage still prevail in society. FGM/C is also performed symbolically, for example by applying antiseptic drops such as *betadine* to the clitoris while flicking it, or by sticking stones as part of a ritual procession. Symbolic FGM/C is also considered a violation of women's rights, which has nothing to do with health promotion, but instead based on the notion that it would prevent women from running wild, or that they would become good women. In other words, it is a form of control over women's sexuality.

"The problem is that the practice of circumcision is still commonplace. They would say, "It's alright, it's just sticking stones, only for the procession." In my opinion, the procession itself is a form of sexual violence against the baby girl. From still an infant, a girl has been subjected to sexual violence, in a social sense." Ummu Azizah, CSR, PT. Solusi Bangun Indonesia.

Male circumcision on the other hand is performed for health-related reasons, but if it does not meet medical standards, it can be harmful to health. One such harmful practice is NTT's post-male circumcision tradition known as *sifon*. It is considered an act detrimental instead to women's health.¹⁵⁷

152 FGD with young persons, 24 February 2020.

153 A case of revenge porn that went viral involves an intimate video taken with the consent of both parties involved, but was later shared by the man without the woman's consent. The media caught wind of the case, exploiting it and going too far as to reveal the woman's identity. From the way in which the case was handled, which invoked UU ITE, law enforcement regrettably did not approach it from a gender perspective. (Participant in the FGD with young persons, 24 February 2020).

154 Victim's counsel, in an FGD with young persons, 24 March 2020.

155 World Health Organization (WHO) defines female circumcision as the act of cutting or injuring, partial or total, the female genital for non-medical reasons.

156 Since 2018, Komnas Perempuan has introduced the term FGM/C (Female Genital Mutilation or Cutting) to replace the term female circumcision with a view to increase the visibility of the said harmful act or practice. See Komnas Perempuan, *Pemotongan dan Perlukaan Genitalia Perempuan: Dalam Persimpangan Antara Tradisi dan Modernitas*, (Jakarta: Komnas Perempuan, 2018).

157 *Sifon* is a sexual activity that a man engages with a woman after his circumcision as a relief for circumcision pain. This leaves the woman vulnerable to infection.

Child marriage also has many adverse consequences on sexual and reproductive health. Biologically, the right age to become sexually active and for childbirth ranges between 20 and 21. Child marriage is harmful to girls who are not biologically ready to have sex. In terms of mental health, they are also not psychologically mature enough to shoulder household responsibilities.

It has been proposed that a ban on the three aforementioned practices harmful to sexual and reproductive health should be incorporated into the RUU P-KS. The proposed heading for the said types of sexual violence is “practices harmful to sexual and reproductive health.” Banning FGM/C, *sifon*, and child marriage in the RUU P-KS should involve religious leaders and traditional elders whose supporting arguments are needed to make sure that the ban can be effectively enforced.

“With regard to sifon (ban, ed.) for example, supporting arguments are needed from Catholics, whereas for female circumcision, they are needed from Muslims, so that there is no religious or cultural resistance to the bill.” Participants in the FGD with youth groups, 24 February 2020.

Even though a child marriage ban is proposed in this bill, this study has captured the many views pointing out the ineffectiveness of sanctions in curbing child marriage, especially as they do not address the root causes of the issue. In other words, penalizing child marriage is considered less effective than if the government rolls out programs and allocates budget for the prevention of child marriage, including free education up to high school, opening up access to decent work for every parent, and education on sexual and reproductive rights and health at all levels of education.

6. Formulation of the Crime of Forced Marriage, including *Kawin Tangkap*

In Sumba, NTT, a form of forced marriage commonly known as “*kawin tangkap*” (catch-a-bride) remains prevalent to this day. *Kawin tangkap* occurs when a woman is abducted by a large group of unidentified men wearing traditional ornaments, and taken to the house of the man whom she would be betrothed to. The mother of the groom-to-be would place a sarong over the kidnapped woman, and thereby solemnizing the marriage. The sound of the gong announces that a marriage has taken place.¹⁵⁸ Once a woman is abducted, it will be hard for her family to seek her release, and may even be asked to pay a dowry first.¹⁵⁹

In several cases, the women are raped during captivity, especially if they were to resist the arrangement. The perpetrator is not only the man intended for the female victim, but also others complicit in the abduction.

158 Ratnawati Lesawenangan, Peruati, in an FGD with religious organizations, 28 February 2020.

159 A *kawin tangkap* incident that occurred in 2019 was reported to have been called off. Someone recorded the incident and shared the video, which later went viral. The woman’s family filed a report with the police who then went to the abductor’s house in a police truck and managed to bring the woman home (Ratnawati Lesawenangan, Peruati, in an FGD with religious organizations, 28 February 2020).

Kawin tangkap is an act where two types of sexual violence have been simultaneously committed—rape and forced marriage. However, the formulation of the DPR RI-initiated RUU P-KS in 2017 does not recognize it as a chargeable offense under the crime of forced marriage. The bill specifically targets the parents who force marriage on their children, or the person officiating the marriage. Meanwhile, in *kawin tangkap*, the perpetrator of a forced marriage is not the woman's parents, but other parties involved, including the individuals wearing traditional decorations.

7. Setting Clear-Cut Boundaries in the Formulation of the Crime of Sexual Exploitation and other Types of Sexual Violence

The boundaries between the different types of sexual violence should be clearly defined. It should also be accompanied by case examples in order to be easily understood. The fine line between sexual exploitation and other forms of sexual violence has raised concerns, considering that the definition for the former is the briefest compared to the rest.

Inputs on the ambit of sexual exploitation that sets it apart from other forms of sexual violence have focused on the element of some form of barter between the perpetrator and victim.¹⁶⁰ However, the term 'barter' itself is considered inaccurate as it gives the impression of an equal position between the perpetrator and the victim, when in fact there is a degree of dependence of the victim towards the perpetrator. In sexual exploitation, what needs to be emphasized is the victim-perpetrator relationship, where the perpetrator sexually exploits the victim who is put in a quid pro quo position in a relationship that is usually unequal.

A case example of sexual exploitation involves RA,¹⁶¹ in a working relationship with the perpetrator, who is a member of the Supervisory Board of a public institution. The perpetrator who is in a position of authority abuses his power to sexually exploit the victim. He would even call and text message the victim's mother. In one of the conversations, he said, "I would like to give you a grandchild. I want to be the one to take care of your daughter." He then promised the victim's mother a trip to Mecca for pilgrimage.¹⁶²

The case falls under the category of sexual exploitation because the victim was afraid of losing her job. She aspired to carve a successful career in the organization, hoping to stay on, and therefore the fear of dismissal. The victim was admitted to hospital for attempted suicide, and on three occasions went on to seek treatment at a mental hospital, at the time when she was under the advice of a counsel. Although there was no explicit threat, the perpetrator's position in the organization itself was already threatening. His position as a top-level executive puts the victim in an intimidating situation.

160 For instance, the perpetrator promises a positive employee evaluation, continued employment, and to pay for the victim's accommodation and daily needs, and others.

161 <https://tirto.id/relasi-kuasa-dalam-kasus-pelecehan-seksual-di-bpjs-tk-dcla> dan <https://tirto.id/kekerasan-seksual-di-dewas-bpjs-tk-keberanian-amel-adalah-lilin-dhxX>, accessed 22 June 2020.

162 Interview with Kristi Poerwandari 7 March 2020.

8. Improvements to the Formulation of the Crime of Sexual Torture

In reference to the RUU P-KS of 2017, sexual torture is defined as sexual violence that involves inflicting torture on another person.¹⁶³ The norm is completely different from that set forth in the Convention against Torture.

The formulation of the crime of sexual torture should also include sexual violence as a means to subdue a community, or known as politically motivated sex crimes, or sexual offenses for the purpose of exercising power over others. In addition, it should include sexual violence meant to coerce another person to confess to an alleged offense.

Sexual violence is not only seen as a patriarchal mindset where weak women, or men, or children are perceived as sexual objects, but it is also used as an instrument of subjugation. Acts of sexual violence that are politically motivated, or for the purpose of gaining power and control over a particular group must be specifically regulated. For example, rape by security forces or the militia during military operations. Sexual violence in the form of harassment can also be used to force confessions. For example, harassment in an attempt to intimidate someone into admitting wrongdoing.

The input on improving the formulation of the crime of sexual violence in the RUU P-KS is expected to contribute towards resolving one of the problems that underpin the urgency of the bill, which is the weakness of and vacuum in material sources of law relating to the crime of sexual violence.

C. The Benefits of RUU P-KS

When it comes to sexual violence, anyone can be a victim, both men and women. It can be committed by anyone who feels they have power over others, either male or female. When a person exercises power over another, there is the possibility for him or her to commit violence.

Therefore, the usefulness of the bill is measured by the extent to which it can deliver the widest possible benefits to the public in general, and victims in particular. The wider public is the beneficiary of the RUU P-KS Bill, as every individual, anywhere and at any time, may be a victim of sexual violence as long as the factors that cause and perpetuate sexual violence still exist.

1. Instruments for Victim-Oriented Responses to and Prevention of Sexual Violence

Criminal law and criminal procedure law thus far focus only on the perpetrator. The assumption is that the conviction of the perpetrator will create a deterrent effect, and therefore no more violence or crimes. However, even if perpetrators are convicted, but the victims are left

¹⁶³ Article 20, DPR RI's Draft RUU P-KS, 2017.

uncared for, whether in terms of recovery or redress, victims who have been harmed, both physically and psychologically, will continue to suffer trauma, and be affected economically and socially, where they are left to fend for themselves.

The bill offers a legal breakthrough for addressing this issue by taking into account the victim's perspective in handling cases of sexual violence. The bill positions victims as individuals who require a multidimensional approach to protection and recovery.

The RUU P-KS seeks to change the existing legal system that only focuses on the perpetrator, and ignores the rights of victims. The bill is not about punishing the perpetrator as severely as possible, or preserving a culture of revenge, but rather to ensure that the perpetrator is justly punished, and the victim's harm is restored. Perpetrators are not only convicted, but also undergo a rehabilitation process to prevent reoffending while still in prison or when released.

"So actually it is hoped that with the RUU P-KS, there will be a comprehensive solution for the victim and perpetrator, as well as exhaustive efforts, from prevention to legal action and post-legal action. The bill is actually quite complete and comprehensive."
Dian Kartikasari, Secretary General of KPI in 2009-2019.

2. Providing Victims Access to Justice through a Comprehensive Formulation of Offenses

The KUHP is a source of reference for LEAs in serving victims, including those who have experienced sexual violence. However, it has not fully integrated the need for victims to have a meaningful sense of justice. In reality, cases of rape are often charged as acts of indecency, which do not proceed to trial due to difficulties in presenting evidence.

"So far, our network have found that sex crimes normally refer to the KUHP, and the provisions on indecent acts. It can only be used for cases of sexual violence with physical contact. So it doesn't apply to catcalling, or exhibitionism, not even when semen droplets can be found, which happens a lot, especially in public transportation and public spaces. The most commonly used definition of rape is limited only to the penetration of the vagina by the penis. So for the 2016 case that led to the death of YY ... it was not recognized as rape." Participant of an FGD with youth groups, 24 February 2020.

Through the RUU P-KS, the absence of a specific formula defining sexual violence in the KUHP will be resolved. Various types of sexual violence, such as sexual harassment, sexual exploitation, forced prostitution, sexual slavery, and sexual torture, which fall outside of the ambit of the KUHP will be covered, and the punishment formulated. This opens up a door for victims to access justice.

“I think there are two sides to this. On the extreme right, this level of harassment has not been fully accommodated. And on the extreme left, there are offenses that in my opinion do not fit into the existing terminology in the child protection law, which we then must make sure that they are accommodated in the types of sexual violence that the RUU P-KS is referring to.” Ai Maryati, Commissioner of KPAI.

3. Optimizing the Role of Government and Society

The RUU P-KS will encourage the optimization of the role of the government and society as not only does it mandate the obligation of the state or government to effectively deal with cases, but also the active participation of the community. Civic engagement is crucial, among others, to eliminate stigma against victims who are members of society themselves. Addressing the issue of sexual violence therefore does not only include the legal dimension, but also social, cultural and economic responses. In addition, the bill encourages the public and private sector to strengthen the roles and responsibilities of families, communities, and corporations in fulfilling the rights of victims.

The role of the government in addressing sexual violence can be optimized through the implementation of a comprehensive and just response system for victims and their families, in addition to the establishment of standard procedures in every public institution involved in the handling of victims, from the early stage of first response up to the completion of the criminal justice process. This includes the government’s obligation to provide the means necessary to handle cases, which should meet the standards of victim protection. The case handling process should also be oriented towards victim protection and recovery.

In addition, the bill mandates the state’s obligation to eliminate sexual violence by including response and prevention into the national and local government budget policies. For example, making it a requirement to provide trained law enforcement officers, which means adequate budget allocation for their proper training and education.

In terms of prevention and monitoring, the government and society should also play a more assertive role. This is because sexual violence prevention as proposed in the RUU P-KS not only involves policy and legislative responses, but also calls for social and community-based crime prevention. This will require the involvement of all components of society and public officials in preventing sexual violence.

“I think this bill expects or promises to not only be about the perpetrators, but also the victims, and even the community. It is about making the bill all-encompassing. Criminal offenses are usually considered to be a matter of the state/state responsibility, but no! It is also the responsibility of the wider public. How can we then create a social environment conducive for preventing/eliminating sexual violence as early as

possible? This is provided in the bill.” K.H. Marzuki Wahid, Secretary of the Institute for Human Resource Studies and Development, Executive Board of the Nahdlatul Ulama (Lakpesdam PBNU).

The RUU P-KS is expected to serve as an umbrella law, and a legal basis for dealing with various types of sexual violence. It also integrates efforts to prevent sexual violence, and handle victims, including in facilitating their recovery. The bill will be a source of reference for various parties in drafting implementing regulations, both by the central and local governments, as well as other relevant entities, such as corporations and transportation service providers. At the local level, regulations may be introduced at the provincial, district/city or village level to further regulate sexual violence response and prevention.

In terms of overall substance, the RUU P-KS is considered to be beneficial to victims in particular, and the public in general. Intrinsically, the bill offers a more comprehensive definition of sexual violence, including a formula for offenses that is not specified in other laws. In addition, the bill provides legal grounds for sexual violence response and prevention, which is needed as key reference for relevant institutions to build sexual violence response and prevention mechanisms in their respective organizations. Furthermore, the bill regulates state and government obligations, as well as public participation, which in turn will lead to the government and society assuming a more optimal role in overcoming problems that they have been facing thus far.



CHAPTER VI

STAKEHOLDER PERCEPTIONS AND SUPPORT TOWARD THE IMPLEMENTATION OF THE REVISED MARRIAGE LAW



In Law No. 16/2019 on the Amendments to Law No. 1/1974 on Marriage (hereinafter referred to as the revised UUP), the minimum age of marriage for girls has been raised from 16 to 19 years. This norm change is considered progressive as it reflects the commitment to eliminate child marriage in Indonesia.

However, the formal legal aspect alone will not automatically curb child marriage. This is where other measures to implement the norm change become crucial.

These findings are divided into three sections. First, the expectations, support, and challenges to the revised UUP as an instrument that can help eliminate child marriage in Indonesia. Second, the necessary follow-up actions for implementing the revised UUP. Third, review of sanctions as a repressive measure towards ending child marriage.

A. Expectations, Support and Challenges to the Revised UUP

1. Expectations on the Revised UUP

Stakeholders in general, have responded positively to the revised UUP, conveying their expectations on the law. They also cautioned on the rough road ahead in achieving the long-term goal of eliminating child marriage, if we were to only rely on the formal legal aspect. The effectiveness of the norm change will be tested through the range of actions and interventions that relevant stakeholders need to take in order to support the elimination of child marriage.

1.1. Removing Negative Impacts

The norm change in Article 7 clause (1) of the Marriage Law or UUP is indeed appreciated as part of efforts to overcome the negative impacts of child marriage. Child marriage causes children to lose access to essential resources for life, such as education, decent work, and welfare, and stops them from being able to enjoy their rights, with the likelihood of perpetuating the cycle of poverty.¹⁶⁴

The biological consequences on a girl's body would be different from that of boy's. Girls are prone to multiple risks, such as miscarriage, bleeding,¹⁶⁵ cervical cancer, and even maternal death.¹⁶⁶

Violence is another negative consequence, whether triggered by unstable emotions due to immature age, or economic issues, which can escalate into domestic violence and divorce.¹⁶⁷ The Ministry of Women's Empowerment and Child Protection (MoWECP) confirmed that the younger the child is, and the lower the level of education, the higher the divorce rate.¹⁶⁸ As experienced by L,¹⁶⁹ who ended up divorcing her husband for not being able to financially support the family. "He can't even take care of others, and certainly not his own wife," she said.

The situation worsened for L when there was little chance of her getting a decent job as she lacks the academic qualifications. To support herself and her children, she had no other option but to become a sex worker. Situations like these mean an ever increasing supply of sex workers, yet it is not indicated in statistics that reflect the impact of child marriage.

164 Interview with Dian Kartikasari, KPI Secretary General for 2009-2019, 21 March 2020; with Lenny N. Rosalin, MoWECP Deputy for Child Growth and Development, 30 April 2020; and with Ghafur Darmaputra, Coordinating Deputy for Women and Children's Protection of the Coordinating Ministry of Human Development and Culture, 20 March 2020.

165 Testimony of victims of child marriage for filing a petition for the judicial review of Law No. 1/1974 on Marriage, No. 22/PUU-XV/2017.

166 Interview with Lenny N. Rosalin, MoWECP Deputy for Child Growth and Development, 30 April 2020, and with Ninuk Widyantoro, 26 March 2020.

167 Interview with Nuryanti Dewi, Director of LBH APIK NTB, 7 April 2020, and with Iyat Haryati, Board Member of KPI Tangerang, 28 April 2020.

168 Ministry of Women's Empowerment and Child Protection, *Profil Anak Indonesia 2018*, (Jakarta: Kementerian Pemberdayaan Perempuan dan Perlindungan Anak RI, 2018), pp. 45-46.

169 Interview with L, sex worker, 7 April 2020.

“So when I divorced, I was a woman with no diploma as I was in my teens when I got married. What else can I do? Having children means needing food, school. Like it or not, I have to work to support the children, even though if it means being a sex worker,” L confided.

A study by the National Statistical Office (BPS), Ministry of National Development Planning/Bappenas, UNICEF and Pusaka UI in January 2020 that provides updated data on child marriage, shows a correlation between child marriage and low access to education, employment, and social protection, and poor quality of health and welfare.¹⁷⁰ However, the contribution of child marriage to exploitative work such as sex work is not elaborated

At the national level, the negative impacts of child marriage will affect the Human Development Index (HDI), and hinder the achievement of the Sustainable Development Goals (SDGs) for target 5.3, and thereby affecting another 8 targets.¹⁷¹

Table 4. Sustainable Development Goals Impacted by Child Marriage

No.	Target
1.	Target 5.3: Eliminate all harmful practices, such as child marriage
2.	Goal 1: End poverty in all its forms everywhere
3.	Goal 2: End hunger, achieve food security and improved nutrition, and promote sustainable agriculture
4.	Goal 3: Ensure healthy lives, and promote well-being for all at all ages
5.	Goal 4: Ensure inclusive and equitable education, and increase lifelong learning opportunities for all
6.	Goal 5: Achieve gender equality and empower women
7.	Goal 8: Promote inclusive and sustained economic growth, full and productive employment, and decent work for all
8.	Goal 10: Reduce inequality within and among countries
9.	Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable, and inclusive institutions at all levels

Source: Compiled from interviews

If child marriage can be prevented and eliminated, the negative impacts it causes will be removed. It is therefore necessary to take concrete steps toward addressing the root causes of child marriage, which among others are related to economic inequality, lack of education and knowledge, gender inequality, and religious understanding, as well as gender and cultural biases.¹⁷² As child marriage is often not caused by a single factor,¹⁷³ a comprehensive

170 See BPS, Ministry of National Development Planning/Bappenas, UNICEF, and Pusaka UI, Pencegahan Perkawinan Anak: Percepatan yang Tidak Bisa Ditunda, (Jakarta: BPS, 2020).

171 Interview with Lenny N. Rosalin, MoWECP Deputy for Child Growth and Development, 30 April 2020, and with Ghafur Darmaputra, Coordinating Deputy for Women and Children’s Protection of the Coordinating Ministry of Human Development and Culture, 20 March 2020.

172 Among others conveyed by Lenny N. Rosalin, MoWECP Deputy for Child Growth and Development, interviewed 30 April 2020; Sonya Hel-len, Kompas journalist, 24 March 2020; Nursyahbani Katjasungkana, Board of Trustees, LBH APIK Association, 1 April 2020; Riri Khariroh, Chair of LKP3A PP Fatayat NU, 20 March 2020; Imam Nakhei (Commissioner, Komnas Perempuan, 20 March 2020), Sr. Natalia (KWI, 6 April 2020), and Fahri Salam (Journalist, Tirto.id, 27 February 2020).

173 BPS, Ministry of National Development Planning/Bappenas, UNICEF, and Pusaka UI, Op. Cit.

and holistic approach to intervention from the relevant stakeholders are therefore of utmost importance.

1.2. Protecting Women's Sexual and Reproductive Health

Setting 16 years as the legal age of marriage in Law No. 1/1974 is considered to be a flagrant disregard of women's sexual and reproductive health, causing harm to both the child bride and their offspring who are at risk of stunting and malnutrition.¹⁷⁴ In extreme conditions, child marriage will make it even harder to bring down the infant and maternal mortality rates.

Although the eventual increase in the minimum age of marriage to 19 indeed deserves appreciation, it is still not an ideal age for first marriage. At this age, girls are considered to not only be ill-prepared for the struggles of married life, but their reproductive organs are also simply not ready to reproduce.¹⁷⁵ Women who have sexual intercourse below the age of 20-21 are susceptible to cervical cancer.¹⁷⁶

In spite of the difference in opinions regarding marriageable age, it actually converges to a common understanding for the need to end child marriage. This shared concern is reflected in the proposals on the recommended minimum age, none of which were the age of a minor.

However, in terms of sexual and reproductive health, there is still uncertainty on the revised UUP's contribution towards preventing harms to the woman's body. This differs from the previous law where the minimum age of marriage was set at 16. It is therefore not surprising when high hopes, in a normative sense, are placed on the revised law in which the minimum age has been raised in efforts to protect women's sexual and reproductive health and rights.

Other forms of support are also needed in an effort to effectively provide better protection of women's sexual and reproductive health and rights (SRHR), especially through SRHR education.¹⁷⁷ Public campaigns calling for the importance of maturity for both men and women before entering marriage should also be launched.¹⁷⁸

1.3. Reducing Gender Inequality

Under Article 7 clause (1) of Law No. 1/1974, women hold an unequal position before the law. Girls are at risk of losing their right to education as they can be married off at the age of 16, compared to boys who have nothing to hold them back from completing education until the age of 19.¹⁷⁹

174 Interview with Ninuk Widyantoro, psychologist, and board member of Yayasan Kesehatan Perempuan, 26 March 2020.

175 Among others, conveyed by Giwo Rubianto, Chair of Kowani, interviewed on 3 April 2020, and Riri Khariroh, Chair of LKP3A PP Fatayat NU, interviewed 20 March 2020. See also "Versi BKKBN Usia 20-21 Tahun Ideal untuk Menikah dari Sisi Biologis", Merdeka.com, 17 September 2019, <https://www.merdeka.com/peristiwa/versi-bkkbn-usia-20-21-tahun-ideal-untuk-menikah-dari-sisi-biologis.html>, accessed 3 June 2020, at 11.11 Indonesian time.

176 Interview with Rahayu Saraswati, Member of DPR RI for 2014-2019, 2 March 2020. See also "Versi BKKBN Usia 20-21 Tahun Ideal untuk Menikah dari Sisi Biologis", *ibid.*

177 Ninuk Widyantoro, psychologist, and board member of Yayasan Kesehatan Perempuan, interviewed on 26 March 2020.

178 Among others, conveyed by Tri Hastuti Nur Rochimah, Secretary of PP Aisyiyah, interviewed on 29 April 2020; Riri Khariroh, Chair of LKP3A PP Fatayat NU, 20 March 2020; and Sr. Natalia, KWI, 6 April 2020. See also the statement made by the Head of BKKBN in "Versi BKKBN Usia 20-21 Tahun Ideal untuk Menikah dari Sisi Biologis", *Op. Cit.*

179 See Constitutional Court Decision 22/PUU-XV/2017.

Girls who enter marriage at an early age have limited access to resources, such as education and employment. This will make it difficult for them to prosper and participate in development. Child marriage inevitably leaves women trapped in this situation throughout their lives. On a broader scale, it will undermine efforts to achieve gender equality in the political, economic and social fields.¹⁸⁰

It would be fair to say that the expectation on the revised UUP to reduce gender inequality is therefore not misplaced.¹⁸¹ Raising the minimum age limit provides women the opportunity to access resources that will improve the quality of their lives, such as the right to education, and to grow and develop, as well as the maturity to perform reproductive functions.¹⁸²

“As long as the issue of child marriage persists, gender equality and justice will never be achieved,” said Dian Kartikasari, Secretary General of KPI 2017-2019.

Under the revised UUP, the minimum age of marriage is the same for girls and boys, which demonstrates the state’s commitment to end gender discrimination. Law No. 16/2019 recognizes that women and men are equal before the law, and therefore both have equal opportunities to education and healthcare, and to enjoy their rights as children.

Raising the legal age of marriage through legislation in order to prevent child marriage is indeed needed to address gender inequality,¹⁸³ but it is not the only way to achieve this¹⁸⁴. The Gender Gap Index (GGI) is measured, among others, according to the level of women’s participation in the labor market, politics, advanced education and income. In 2020, Indonesia’s GGI was at 85th position out of 153 countries.¹⁸⁵ Based on its ranking, it will take at least 163 years before Indonesia can achieve gender equality, unless it is accompanied by effective measures to address the issue.¹⁸⁶

*In order to reduce gender inequality, interventions across sectors are necessary. The revised UUP’s contribution towards efforts to reduce gender inequality will be significant, if it is supported by new development perspectives for a more just and equitable life between men and women.*¹⁸⁷

180 Interview with Dian Kartikasari, Secretary General of KPI for 2009-2019, 21 March 2020.

181 Interview with Dian Kartikasari, Secretary General of KPI for 2009-2019, 21 March 2020; with Sonya Hellen, Kompas journalist, 24 March 2020; and with Kalis Mardiasih, influencer, 5 March 2020. See also Siti Khoirun Ni’mah, et al., Memo Kebijakan Sosial Ekonomi INFID 2017: 10 Cara Menurunkan Ketimpangan Gender di Indonesia, (Jakarta: INFID, Koalisi Perempuan Indonesia, OXFAM, 2017), p. 12.

182 Interview with Kalis Mardiasih, influencer, 5 March 2020, and with Sonya Hellen, Kompas journalist, 24 March 2020.

183 INFID recommends 10 ways in which the state, especially the government, and corporations should adopt to address gender inequality. See Siti Khoirun Ni’mah, et al., Op. Cit.

184 Among others, conveyed by Giwo Rubianto, Chair of Kowani, interviewed on 3 April 2020; Nursyahbani Katjasungkana, Board of Trustees of LBH APIK Association, 1 April 2020; Achmad Hilmi, researcher at Rumah KitaB, 31 March 2020; Arif Maulana, Director of LBH Jakarta, 19 March 2020; Fahri Salam, Tirta.id journalist, 27 February 2020; and Riri Khariroh, Chair of LKP3A PP Fatayat NU, 20 March 2020.

185 See World Economic Forum, Global Gender Gap Report 2020, p. 9. http://www3.weforum.org/docs/WEF_GGGR_2020.pdf

186 See “More Indonesian Women in Labor Market Fewer in Politics Gender Gap Report,” The Jakarta Post, 2 January 2020, <https://www.thejakartapost.com/news/2019/12/30/more-indonesian-women-in-labor-market-fewer-in-politics-gender-gap-report.html>, accessed 3 June 2020, at 10.29 Indonesian time.

187 Interview with Nursyahbani Katjasungkana, Board of Trustees of LBH APIK Association, 1 April 2020; Achmad Hilmi, researcher at Rumah KitaB, 31 March 2020; and Giwo Rubianto, Chair of Kowani, interviewed on 3 April 2020.

The revised UUP is expected to pave the way towards eliminating child marriage. If child marriage can be prevented and eliminated, the adverse consequences on girls who marry young will be avoided. In addition, gender inequality and the risk to sexual and reproductive health will also be reduced, and the macro implications at the national level surmounted.

The groundbreaking revised law requires further support within a unified legal system, both through synergies and collaborative work among stakeholders in overseeing the implementation. In the addition to the need to develop a legal culture that internalizes gender equality in society, and interventions that target the root causes of child marriage.

This study noted how stakeholders also support changes to the UUP in other aspects.¹⁸⁸ This opinion takes into consideration the socio-cultural developments that have a bearing on gender relations in the private and public spheres, and the inconsistency of existing norms given the shifting needs and interests of the modern world.

2. Support and Challenges

2.1 Availability of Support

Based on the 2008 - 2018 Susenas (National Socio-Economic Survey), the prevalence of women aged 20-24 who were married before the age of 18 was 11.2 percent, a decrease compared to the 2008 survey at 14.67 percent.¹⁸⁹ This means that by 2024, the prevalence of child marriage is targeted to decline by 2.46 percent. In the last 12 years, the child marriage rate has shown a downward trend, albeit not quite as rapid as it should.

The aforementioned trend may be due to continuous government and civil society efforts to prevent child marriage. This is a modality that will strengthen the operationalization of the revised UUP to eliminate child marriage in Indonesia.

Table 5. Initiatives for the Prevention and Elimination of Child Marriage

¹⁸⁸ Interview with Marzuki Wahid, Fahmina Institut, 21 March 2020, and written interview with Imam Nakhei, 22 March 2020.

¹⁸⁹ BPS, MoNDP/Bappenas, UNICEF, and PusKapa UI, Op. Cit.

No	Initiative	Activity	Description
1	National-level policy harmonization on the prevention of child marriage	Presidential Regulation No. 59/2017 on the Implementation of Sustainable Development Goals	Target 5.3 seeks to “eliminate all harmful practices, such as child marriage” as part of Goal 5 on “achieving gender equality and empowering women.”
2		Supreme Court Regulation No. 5/2019 on Guidelines for the Hearing of Petitions for Marriage Dispensation	The judge presiding over a hearing on a marriage dispensation request must consider the views of all parties concerned, including the child
3		Presidential Regulation No. 18/2020 on RPJMN 2020-2024	The target is to reduce the child marriage rate from 11.21 percent in 2018 to 8.74 percent by late 2024
4		National Strategy on Child Marriage Prevention, February 2020	Guidelines on synergized implementation of efforts aimed at preventing child marriage. Bappenas and MoWECP
5		Child-Friendly District/City Program	A reduced rate of child marriage is included as an indicator. MoWECP
6	Policymaking at the provincial and/or district/city level	NTB gubernatorial Circular No. 150/1138/Kum/2014 on Age of Maturity for Marriage Gunungkidul District Head Regulation No. 36/2015 on Prevention of Child Marriage Katingan District Regulation No 9/2018 on Prevention of Child Marriage West Lombok District Regulation No. 30/2018 on Prevention of Child Marriage Etc.	Provincial/district/city government. Support from civil society groups working at the local level, such as LBH APIK NTB in NTB, Rifka Annisa in Yogyakarta, WVI in Central Sulawesi, etc.
7	Policymaking at the village level	Pati'di village regulation in Mamuju, West Sulawesi, on Prevention of Child Marriage, April 2019. Bialo Village Regulation No. 7/2018, in Bulukumba, South Sulawesi. Kediri village regulation in West Lombok, NTB, March 2019. Etc.	Village government Support from civil society groups working at the local level, such as PP Aisyiyah in West Sulawesi, LBH APIK NTB in NTB, etc.
8	Drafting of the RUU P-KS	Formulation of forced marriage as a criminal offense	The bill was initiated by DPR RI. It was drafted at the advice of Komnas Perempuan and Service Provider Forum.
9	Building the commitment of stakeholders	“Stop Child Marriage” joint movement	Initiated by MoWECP on 3 November 2017
10		Formation of the Joint Movement for Child Marriage Prevention (GEBER PPA)	Initiated by MoWECP and involved the public, prominent figures, children's rights activists, and relevant government ministries (first launched on 18 December 2018 and relaunched on 31 January 2020)
11		Integrity Pact of 20 provincial governments with high rates of child marriage	Facilitated by MoWECP, on 31 January 2020.
12		Capacity building of judges and KUA (Religious Affairs Office) officers	<ul style="list-style-type: none"> • Supreme Court • Ministry of Religious Affairs • Civil society: YKP, etc.

No	Initiative	Activity	Description
13	Campaigning and awareness-raising	Formation of children/teenagers' forum	<ul style="list-style-type: none"> • MoWECP: Children's Forum • BKKBN: Generasi Berencana (GenRe), PIK-R, Teen Counseling • MoRA: Marriage Counseling Program (Bimwin) • Kalyanamitra: Stop Child Marriage Youth Forum
14		National education and campaigning	<ul style="list-style-type: none"> • MoRA: Pre-Marriage Course (Suscatin) • MoWECP: KIE, Puspaga, etc. • Civil society: KPI, Kalyanamitra, YKP, Jurnal Perempuan, Kowani, etc.
15		Providing alternative options, such as employment and skills training (courses)	<ul style="list-style-type: none"> • KPI Tangerang: not only education, but also inquiry about job openings in companies
16		Research and studies	<ul style="list-style-type: none"> • Civil society: Puskapa, etc. • Development partners: UNICEF, AIPJ2, etc. • Various universities in Indonesia
17	Participation of religious organizations	Educating the members of religious organizations	<ul style="list-style-type: none"> • MLKI <i>Penghayat Kepercayaan</i>: moral education • WHDI: family education • WBI • Lajnah Imaillah: Guidelines for mothers • PP Fatayat NU: Program on family and the common good • PP Aisyiyah: Harmonious family program
18		Participation of religious organizations	<ul style="list-style-type: none"> • WVI: collaborated with MUI Palu Central Sulawesi and West Kalimantan
19		Reinterpreting the teachings of world religions and indigenous faiths in support of child marriage prevention	<ul style="list-style-type: none"> • Civil society: KUPI, Rumah KitaB, etc. • Religious organizations: PP Fatayat NU, PP Aisyiyah, PP Muhammadiyah, PGI, KWI, etc. • <i>Penghayat kepercayaan</i>: MLKI Puan Hayati, Sunda Wiwitan, etc. • Progressive religious leaders

Source: Compiled from various sources

Based on the support shown, the implementation of the revised UUP needs to optimize the various types of support from and efforts by the government and civil society. The synergy created among stakeholders in eliminating child marriage needs to be strengthened by promoting wider stakeholder engagement, while addressing the root causes of child marriage.

2.1. Challenges

Despite the many efforts already made, there are challenges that still need to be addressed to reverse the trend of child marriage. This concerns the effectiveness of local regulations that tend to focus on the age of maturity for entering marriage, but fail to provide solutions to various factors causing child marriage. Efforts to introduce comprehensive legislation targeting the root of the problem are also hampered by government policies that seek to simplify regulations.¹⁹⁰ In addition, the tendency to impose sanctions also creates problems for children who may not have the luxury to avoid entering marriage.¹⁹¹

Budget constraints also pose a problem for local governments, especially in meeting the indicators of the Child-Friendly District or City Program.¹⁹² Another challenge lies in the bureaucratic mentality that should be reformed as various preventive efforts, including the sensitization of the revised UUP, should be carried out using different media channels and other creative approaches.¹⁹³

The stop child marriage campaign was also criticized for failing to extend its reach down to the village level.¹⁹⁴ The prevalence of child marriage is indeed higher in rural areas (16.87 percent) than in urban areas (7.15 percent),¹⁹⁵ and the socio-cultural constructions hostile to women remain deeply rooted in rural areas. For example, in South Sulawesi where the culture of shaming women for being an “old maid” remains entrenched,¹⁹⁶ and a village in East Java where society believes that “it is better to be a widow than still be unmarried at the age of 14”.¹⁹⁷

Changing the mindset from “ashamed of being an old maid” to “ashamed of creating a weak generation” is a challenge in itself.¹⁹⁸ Not to mention the issue of out-of-wedlock pregnancy, and the *merarik* tradition (abducting girls for marriage) in NTB, where the girl would still be blamed for bringing dishonor to the family should the marriage be called off, and she is returned to her parents. An exception may be found in a community in North Sulawesi who eschews the notion of shame and dishonor in their socio-cultural values.¹⁹⁹

However, the community in general still adheres to socio-cultural values that encourage the practice of child marriage, including in placing greater importance on preventing premarital sex.²⁰⁰

190 Junito Drias, Jaringan Aksi, in an FGD with journalists and NGOs, 4 March 2020.

191 Dwianti F. Putri, Studi Literatur Peraturan Daerah Pencegahan Perkawinan Anak, (Jakarta: UNICEF in collaboration with AIPJ2, 2019), as excerpted from MoNDP/Bappenas, Strategi Nasional Pencegahan Perkawinan Anak, (Jakarta: MoNDP/Bappenas, 2020), p. 29.

192 Junito Drias, Jaringan Aksi, in an FGD with NGOs and journalists, 4 March 2020.

193 Interview with Ninuk Widyantoro, psychologist and board member of Yayasan Kesehatan Perempuan, 26 March 2020.

194 Interview with Jufriansyah, Yayasan Stabil Banjarmasin, 29 April 2020.

195 BPS, MoNDP/Bappenas, UNICEF, and Puskapa UI, Op. Cit., p. 8.

196 Interview with Achmad Hilmi, researcher at Rumah KitaB, 31 March 2020.

197 Interview with Ummu Azizah, CSR PT SBI, 27 March 2020.

198 Interview with Achmad Hilmi, researcher at Rumah KitaB, 31 March 2020.

199 In certain parts of North Sulawesi, local residents prefer not to marry off their daughter at a tender age, even when she is pregnant as it is considered a disgrace to have to break the law in order for their daughters to marry young. This was pointed out by Ratnawati Lesawengan, Peruati in an FGD with religious organizations, 28 February 2020.

200 Interview with M. Adib Mahrus, Sub-Section Head for Harmonious Families, Directorate of the Development of KUA and Harmonious Families, Directorate General of Muslim Community Development, MoRA, 24 March 2020.

Not much however has been heard about regions who have been successful in curbing child marriage, and therefore no good prevention practices are available. One region's success story does not mean that it will be as effective for other regions.²⁰¹

The government's inaction in developing SRHR education has also resulted in lack of public knowledge for preventing child marriage and unwanted pregnancy. Rising religious fundamentalism following the International Conference on Population and Development (ICPD) held in Cairo in 1994, also cast a shadow over the achievement of the MDGs and SDGs, thereby exacerbating the stigma against comprehensive SRHR education.²⁰² Religious fundamentalism undermines the achievement of gender equality, but on the other hand the government appears to have turned a blind eye as it is not considered a threat to state security.²⁰³

Progressive religious communities and leaders have built a wealth of religious reinterpretations that support the elimination of child marriage. However, its massification remains far from adequate amidst the clash between the naïve and intelligent approach to religion. It is indeed a challenge to negotiate with discriminatory figures who take the religious approach to public policymaking on marriage. It is also important to ensure the proper framing of narratives to counter heightened religious fervor in an age where people gain religious understanding in an instant way, specifically in urging the younger generation to open their eyes to the diversity in society outside of themselves.

To accelerate progress towards eliminating child marriage, the different forms of support available can provide the foundation on which to launch actions for the effective implementation of the revised UUP. The identified challenges also need to be managed for the successful operationalization of the revised UUP.

B. Operationalizing the Revised UUP

To achieve the goals that the revised UUP is intended to serve, its operationalization must have the support of all components within the legal system. Child marriage cannot be eradicated solely through the revised UUP, but needs to be backed by additional efforts for creating an environment conducive for eliminating child marriage, from prevention to response.

201 Interview with Fahri Salam, Tirta.id journalist, 27 February 2020.

202 Interview with Ninuk Widiantoro, psychologist and board member of Yayasan Kesehatan Perempuan, 26 April 2020.

203 Interview with Achmad Hilmi, researcher at Rumah KitaB, 31 March 2020

The operationalization of the revised UUP is illustrated below:

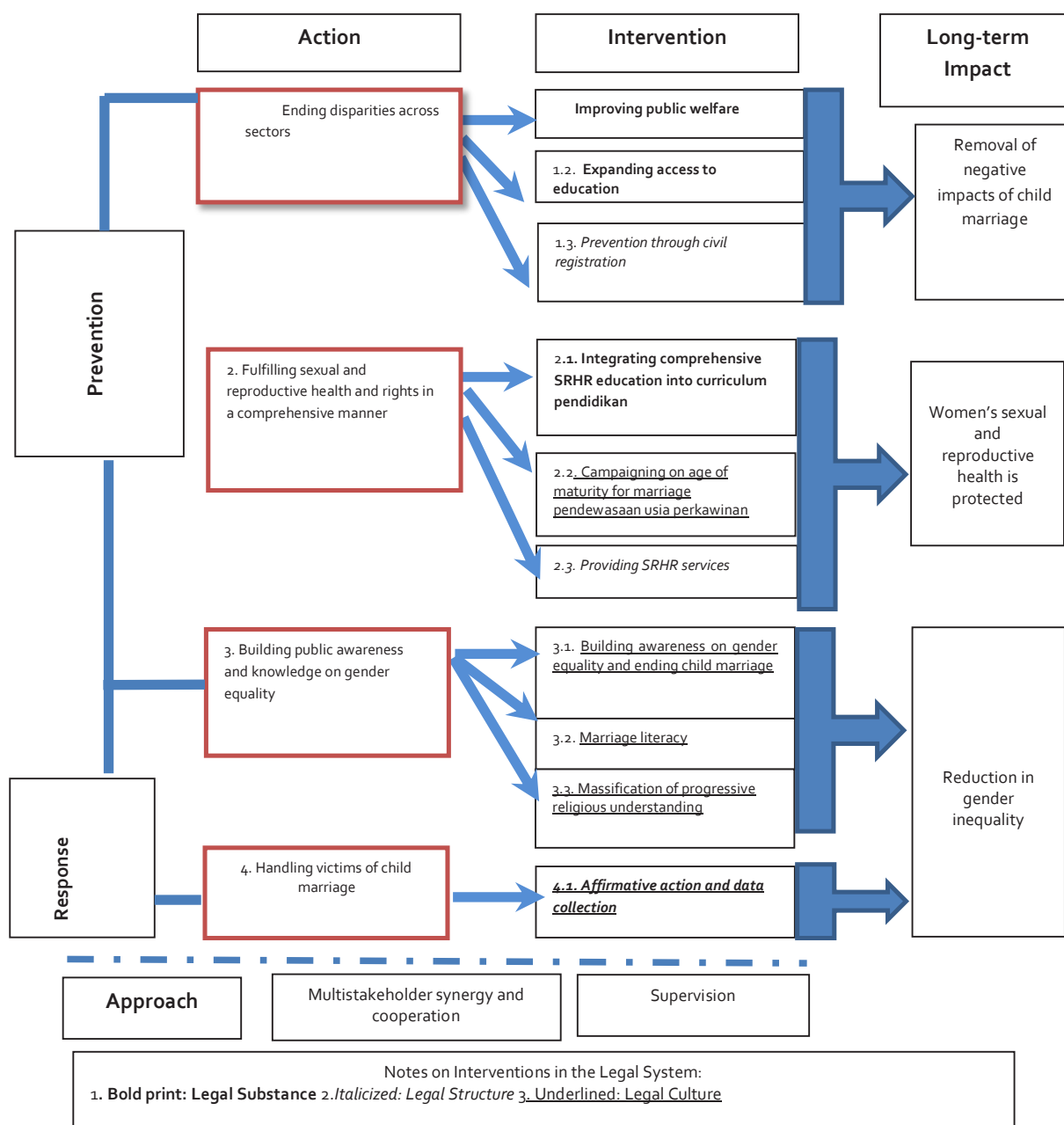


Diagram 4. Operationalization of the Revised UUP

Bearing in mind the three major expectations placed on the revised UUP, as well as the availability of support, and challenges that need to be further dealt with in order to push the child marriage rate down, the study has identified four key actions that should be undertaken: 1) Ending disparities to address the root causes of child marriage. 2) Fulfilling sexual and reproductive health and rights in a comprehensive manner. 3) Building public awareness and knowledge on gender equality. 4) Handling victims of child marriage.

All four actions should emphasize on the optimal use of available support. However, additional efforts that have not been done before are equally necessary, while ongoing work should continue to be maintained and strengthened.

For efforts to be effective, relevant stakeholders need to apply two approaches in their implementation: 1) Multistakeholder synergy and collaboration; 2) Supervision.

The operationalization of the revised UUP is further described below.

1. Approach

Multistakeholder synergy and collaboration is needed for the optimal use of available resources. Supervision is equally important for all parties concerned to ensure that efforts are effectively implemented.

1.1. Multistakeholder Synergy and Collaboration

The revised UUP should be implemented through wide-scale community empowerment and interventions across sectors to ensure that it remains effective down to the grassroots level. It should therefore be implemented in synergy among government ministries/agencies, national and local governments, and community institutions.²⁰⁴

“Everyone has to take part, not only us. You might say that the important thing is for this government ministry, or that community institution to take the lead. No! That is not the case. We must all take part in this.” Lenny N. Rosalin, MoWECP Deputy for Child Growth and Development.

At least 17 government ministries or agencies have duties and functions that reflect the obligatory contributing role to eliminating child marriage. The MoWECP needs to further identify the programs and activities of each government ministry/agency to ensure that they remain aligned with the objectives outlined in the RPJMN and the National Strategy on Child Marriage Prevention.²⁰⁵ The MoWECP is also expected to take on the role of coordinator for harnessing synergies among stakeholders to further consolidate actions.²⁰⁶ Intensive communication and coordination is crucial for all relevant stakeholders, including government ministries or agencies, civil society, and the academia, and should also involve the Indonesian National Police for handling cases of forced marriage.

Synergies can be created through parallel implementation of all the necessary efforts and interventions. For example, awareness-raising activities should be accompanied by poverty-busting programs.

²⁰⁴ The word “keroyokan” (working together) is also used to illustrate this approach. Interview with Lenny N. Rosalin, MoWECP Deputy for Child Growth and Development, 30 April 2020, and Muhammadiyah executive, interviewed 25 April 2020.

²⁰⁵ MoWECP reviewed the suitability of government ministry/agency programs with efforts to eliminate child marriage, where no program or activity was found to be effective in quickening the pace of the implementation of the revised UUP. The results of the study however have not been released as they need to be consulted with senior officials. Interview with Thomas, A third echelon officer, MoWECP Deputy of Child Growth and Development, interviewed 30 April 2020.

²⁰⁶ Interview with Rita Pranawati, Commissioner of KPAI, 27 March 2020, and Junito Drias, Jaringan Aksi, in an FGD with NGOs and journalists, 4 March 2020.

“This means that even though religious leaders have been talking about it constantly, but if basic needs are still not being met (education, employment), then it’s no use. So there must be synergy.” Euis Kurniasih, adherent of Sunda Wiwitan.

A synergistic approach also helps stakeholders to work effectively through the division of roles, targeting all agents of child marriage that include 1) children; 2) family; and 3) government. This can create a strong line of defense for preventing child marriage, starting from the individual child, to the parents, families, communities, and government.²⁰⁷ If a parent petitions for marriage dispensation, Puspaga—a government-run family resource center—would be among the first hurdle to clear, as its recommendation is part of requirement for filing a petition for dispensation with the court, and as reference for the hearing of the request as set forth in Supreme Court Regulation No. 5/2019.

Multistakeholder synergy also needs to be supported by harmonized policies from the national to village level.²⁰⁸ All policies including village regulations designed to prevent child marriage are expected to not only set the minimum age of marriage, but also facilitate local villages in narrowing the inequalities that contribute to child marriage.²⁰⁹

Taking the synergistic approach does not mean that civil society passively waits for the government to make a move, but that the government is expected to play a more assertive role as it has the necessary budgetary and planning support.²¹⁰ Given the power that it wields, the government plays a major role in pushing for social engineering and cultural change where the public would be more receptive to the idea of ending child marriage.

This is where the challenge lies. The government gives the impression that it is afraid of resistance against any form of progressive policy that it might introduce. For example, the female circumcision ban that was repeatedly annulled following fierce protests. This reflects the importance of building understanding on gender equality in order to support the synergistic actions that need to be done.

1.2. Supervision

Supervision is important as part of accountability, including in the implementation of programs and activities. DPR RI as a state institution that performs a supervisory function needs to oversee the implementation of the revised UUP. This includes requiring the Ministry of Religious Affairs to report on the actions taken to raise public awareness in an effort to prevent child marriage.²¹¹

207 Interview with Lenny N. Rosalin, MoWECP Deputy for Child Growth and Development, 30 April 2020.

208 Interview with Nursyahbani Katjasungkana, Board of Trustees, LBH APIK Association, 1 April 2020, and with Nila Wardani, RUMPUN Malang, 28 April 2020.

209 Interview with Nila Wardani, RUMPUN Malang, 28 April 2020, and with Junito Drias, Jaringan Aksi, in an FGD with NGOs and journalists, 4 March 2020.

210 Interview with Musdah Mulia, Chair of ICRP, 17 March 2020, and with Nur Rofiah, 26 February 2020.

211 Interview with Feri Amsari, legal expert in constitutional law, Pusako, Faculty of Law, University of Andalas, 27 March 2020.

This oversight function not only rests with authorized bodies, but also the public. In view of this, the institutions under supervision must provide supporting infrastructure accessible to the overseers of law, and to the public. For example, the periodic reports from every KUA under MoRA can provide data on the number of marriages registered, and the age of each couple entering marriage.²¹²

2. Prevention

2.1. Ending Disparities Across Sectors

An unfinished business that needs to be addressed once the revised UUP has been enacted concerns the inequalities that persist in society, which include inter-regional income inequality, as well as disparities in infrastructure, health facilities, access to education, and the economy. Efforts to uproot the causes of child marriage are crucial in order to eliminate the negative consequences of child marriage.

There are many driving and perpetuating factors of child marriage that may be influenced by the local socio-cultural context, which may differ from one region to another. These efforts will only be accurately targeted if it takes into account local needs.²¹³

Efforts to remove the root causes of child marriage are spelled out into three key interventions: 1) improving well-being; 2) expanding access to education; and 3) prevention through civil registry.

2.1.1. Improving Welfare

Improving people's welfare through economic interventions at the local level is crucial, where child marriage occurs mainly due to poverty, the desire to climb up the socio-economic ladder, and loss of livelihood as a result of land grabbing, among others.²¹⁴ Interventions targeted at removing the root causes need to be done through government policies at the national and local levels. The village funded programs also provide the platform for launching interventions tailored to local needs, for example the economic empowerment of the local population, or the provision of infrastructure to quicken the pace of economic development at the village level.

If poverty is the reason for parents to stop children from schooling, intervention should be in the form of scholarships for girls. This can help end their economic dependence on others, which they would normally seek through child marriage. Various government programs aimed at alleviating the poverty situation, such as the Family of Hope Program (PKH), should be conditional on the continued school enrollment of their daughters.²¹⁵

212 Ibid.

213 Interview with Fahri Salam, Tirto.id journalist, 27 February 2020.

214 Interview with Anggara Suwahju, Executive Director of ICJR for 2017-2019, 3 March 2020; Dian Kartikasari, Secretary General of KPI for 2009-2019, 21 March 2020; and Nursyahbani Katjasungkana, Board of Trustees, LBH APIK Association, 1 April 2020.

215 Interview with Nursyahbani Katjasungkana, Board of Trustees, LBH APIK Association, 1 April 2020.

2.1.2. Expanding Access to Education

Education is seen to be an effective way of curbing child marriage, as it helps inculcate a positive mindset and the need for achievement in striving towards a brighter future.²¹⁶ Education should therefore be made as widely accessible as possible to all, without exception, which will enable people to shift their focus to education rather than marriage.

This means that the 12-year compulsory education program is the cornerstone for eliminating child marriage.²¹⁷ To this end, the Ministry of Education and Culture (MoEC) cannot work alone. The full support of each government ministry and agency is required for interventions to effectively allow every child to enjoy his or her right to education.

Table 6. Interventions for Expanding Access to Education

No.	Intervention	Lead Agency
1	Providing supporting infrastructure and facilities for expanding access to education (schools, teachers, development of teaching and learning methods, etc.); from cities to the most far-flung regions	MoEC
2	School fee waiver up to high school	MoEC
3	Providing health facilities to ensure that children are not prevented from schooling for health reasons	MoH
	Providing road infrastructure, bridges, etc.	MoPW
4	Improving the quality of education through curriculum reform that should be oriented towards producing human resources well-equipped to lead successful lives with a shared sense of humanity	MoEC
5	Stimulating school innovations for creating an environment conducive for learning where children are involved in positive activities	MoEC
6	Updating religious education materials and curricula that emphasize on humanity and a more humanist religious understanding.	MoEC MoRA

Source: Compiled from interviews

The failure of the education sector to contribute towards bringing child marriage rates down faster is partly seen to be related to an educational curriculum that does not teach humanity and religion through a more contemporary lens, but remains bogged down in an outdated frame of mind. This is where the government needs to be assertive in reforming the religious education curriculum to better reflect the realities of leading life as part of the nation and state.²¹⁸

2.1.3. Prevention through Civil Registration

Apart from access to education, another essential service is the fulfillment of the right to identity. Document falsification as one of the pathways to allowing child marriage needs to be anticipated, including if it involves the application of new identity documents in a different area other than the place of domicile. This is important to identify regions that would easily

²¹⁶ Interview with a Muhammadiyah executive, 25 April 2020.

²¹⁷ Interview with M. Adib Mahrus, Sub-Section Head for Harmonious Families, Directorate of the Development of KUA and Harmonious Families, Directorate General of Muslim Community Development, MoRA, 24 March 2020.

²¹⁸ Interview with Marzuki Wahid, Fahmina Institut Cirebon, 21 March 2020, and with a Muhammadiyah executive, 25 April 2020.

issue the seemingly valid document but with fabricated data.²¹⁹

This also calls for synergy between institutions working toward ending child marriage and those championing on other issues, such as the protection of Indonesian migrant workers. At the same time, it does not only help ensure the implementation of the revised UUP, but also the effective implementation of the Law on Civil Registration, and Law on Villages.

2.2. Ensuring Comprehensive Sexual and Reproductive Health and Rights

Even though the revised UUP raises the minimum age of marriage to 19, the ideal marriageable age for women to reproduce should be above 20. Additional measures are therefore needed that contribute towards the protection of women's sexual and reproductive health.

Interventions that need to be undertaken include: 1) integrating comprehensive SRHR education into the educational curriculum; 2) campaigning for age of maturity for marriage; and 3) providing services to fulfill sexual and reproductive health and rights.

2.2.1. Integrating Comprehensive SRHR Education into the Educational Curriculum

When individuals, including children, are exposed to comprehensive SRHR information, the risk of unwanted pregnancy can be reduced, and the quality of women's sexual and reproductive health will be more guaranteed. As such, incorporating comprehensive SRHR education into the educational curriculum from early childhood to tertiary education can no longer be delayed.

This is not the first time this has been suggested. It has been put forward since almost 40 years ago. Unfortunately, it was never followed up.²²⁰ In addition to being an effective instrument to eliminate child marriage, SRHR education can also help reduce maternal mortality rates.

SRHR education is also believed to be more effective in building children's agency in delaying marriage than education. Premarital courses should be intended for those who have given notice of intention to marry, instead of those who have no plans to marry.²²¹

The MoEC should therefore immediately harmonize policies by integrating SRHR education into the educational curriculum at all levels. This is a substantive step that the education sector must take to synergize efforts aimed at preventing child marriage.

As part of the synergistic approach, MoWECP calls on all parties to work hand in hand towards preventing child marriage, including educators as potential stakeholders focused

219 Wahyu Susilo, Migrant Care, in an FGD with NGOs and journalists, 4 March 2020.

220 Interview with Ninuk Widyantoro, psychologist and board member of YKP, 26 March 2020.

221 Interview with Kalis Mardiasih, influencer, 5 March 2020.

on children, especially those schooling.²²² This will be an uphill struggle if educators are not equipped with comprehensive SRHR knowledge, and SRHR education is not part of the education curriculum.

Even though the required intervention relates to legal substance, the implications are in fact crucial for the legal culture component, in order to internalize a progressive mindset that supports the elimination of child marriage. Such intervention can contribute to the prevention of sexual violence, given that poor SRHR knowledge is one of the factors perpetuating sexual violence. There should be no reason to further delay the integration of SRHR education into the educational curriculum.

In terms of allaying concerns that have been raised for rejecting SRHR education, a possible approach would be the use of unobjectionable words for the headlines so as not to elicit resistance, yet remain true to the substance.²²³ If such concerns are still used as an excuse to delay, it will be a challenge for all government ministries and agencies to take the initial step towards building understanding about SRHR.

The government's stalling in pushing this intervention through will mean that much-anticipated protection of sexual and reproductive health will be limited only to the formal legal dimension of the minimum age of marriage. Expectations on preventing sexual violence will likewise remain elusive.

2.2.2. Campaigning for Age of Maturity for Marriage

Even though the minimum age of marriage for girls has been raised to 19 by virtue of the revised UUP, this does not mean that it is the recommended marriageable age.²²⁴ For this reason, campaigning for the age of maturity for marriage is an intervention that needs to be taken, as it is in line with efforts to protect women's sexual and reproductive health and rights.

To go further on this, the stop child marriage campaign can be specifically directed towards advocating against child pregnancy.²²⁵ Comprehensive SRHR education therefore should be part of the campaign.

Campaigns for delaying marriage until age of maturity have been carried out by community organizations such as PP Aisiyiah and the PP Fatayat NU Consultation Institute for the Protection of Women and Children (LKP3A). Both organizations called on the need to advocate for an ideal minimum age of first marriage at above 21 years, which is considered more sensible in terms of reproductive readiness and maturity.

222 Interview with Lenny N. Rosalin, MoWECP Deputy for Child Growth and Development, 30 April 2020.

223 Interview with Gomar Gultom, Chair of PGI, 18 March 2020.

224 Interview with Tri Hasturi Nur Rochimah, Secretary of PP Aisiyiah, 29 April 2020; Riri Khariroh, Chair of LKP3A PP Fatayat NU, 20 March 2020; and Rahayu Saraswati, Member of DPR RI 2014-2019, 2 March 2020.

225 Participants in an FGD with NGOs and journalists, 4 March 2020.

At the local government level, this has also been initiated by the NTB provincial government since 2014 through a gubernatorial circular where the recommended age of maturity for marriage is set at 21, which therefore becomes the minimum age for entering marriage.²²⁶ Meanwhile, at the national level, BKKBN is a state institution committed to campaigning for an ideal marriageable age of over 20.²²⁷

These interventions need to be scaled up through the involvement of government ministries or agencies whose broad remit includes public campaigning, such as the Ministry of Communication and Informatics, and civil society groups who actively use social media for their advocacy work. These initiatives are not meant to counter groups campaigning for early marriage by touting a religiously framed romanticized view of marriage.

2.2.3. Delivering Services for Ensuring Sexual and Reproductive Health and Rights

Apart from limited SRHR knowledge, the absence of adequate space for children to safely and comfortably confide and ask questions is also a contributing factor to child marriage. Premarital pregnancy that ends in child marriage should be dealt with through counseling for adolescents, which creates a safe place to unburden themselves, and be informed without any finger-pointing.²²⁸

The government through the Ministry of Health provides complaint and counseling services for adolescents through youth counseling units available in *puskesmas* or local community health centers across the country. The facilities however have not been effective in reaching out to teenagers in need. *Puskesmas* is perceived as ‘a place where sick people go’, and therefore creates a barrier for teenagers to access. Furthermore, when a teenager visits a *puskesmas*, society may label him or her a troubled teenager.

Schools in general also provide such support for students through their guidance and counseling teachers. These facilities need to be run by educators or guidance and counseling teachers who are warm, friendly and non-judgmental so as to make students feel safe and comfortable enough to confide.

Meanwhile, the health sector needs to play a part in eliminating child marriage by providing safe abortion services and psychological support.²²⁹ Sexual and reproductive health and rights can be satisfied when there are interventions to curb child marriage, and reduce maternal mortality rates, such as keeping options open for safe abortion services, or comprehensive

226 NTB Gubernatorial Circular No. 150/1138/Kum/2014 on Age of Maturity for Marriage

227 See also Merdeka.com, “Versi BKKBN Usia 20-21 Tahun Ideal untuk Menikah dari Sisi Biologis”, Op. Cit.

228 Interview with Tri Hastuti Nur Rochimah, Secretary of PP Aiyisyah, 29 April 2020.

229 Written interview with Nuur Annisaa Yura, Solidaritas Perempuan, 31 March 2020.

SRHR education.²³⁰ If the government takes one of the two options, maternal mortality and child marriage rates will assuredly be reduced.

2.3. Building Public Knowledge and Awareness on Gender Equality

The key to eliminating child marriage does not lie in the imposition of age limits. To achieve what the revised UUP is meant for, aware-raising efforts are equally necessary. With regard to internal factors, the agency of girls and their parents in delaying marriage will be influenced by higher educational attainment, and greater awareness of women's rights, especially the principles of gender equality and gender justice.²³¹

"If they don't have it [education], and women are taught to become housewives who depend on men and others, age limits will not be effective." Nursyahbani Katjasungkana, Board of Trustees, APIK Association.

In view of this, large-scale actions to build public knowledge and awareness on the adverse effects of child marriage must be carried out in line with efforts to raise awareness on gender equality. Gender sensitization interventions should also target the root causes of child marriage. If such efforts are preoccupied only with issues around child marriage, they will once again be partial interventions that will not be able to fully contribute towards reducing gender inequality.

The said interventions cover three key areas: 1) sensitization; 2) marriage literacy; and 3) massification of progressive religious understanding.

2.3.1. Sensitization

As a form of public education, sensitization is an effective means for spreading the word on gender equality. However, it requires creativity and innovation, including on how information is presented to specific target audiences, especially given the space-time constraint in conducting sensitization activities.

Gender sensitization in principle does not require new programming within government ministries/agencies as it can be integrated into existing programs. The following provides several interventions that government ministries or agencies can undertake for gender sensitization:

230 Interview with Ninuk Widyantoro, psychologist and board member of YKP, 26 March 2020.

231 Interview with Nursyahbani Katjasungkana, Board of Trustees, LBH APIK Association, 1 April 2020.

Table 7. Recommended Interventions for Gender Sensitization

No	Ministry/Agency	Intervention	Description
1	Ministry of Health	Making accessible <i>puskesmas</i> and public service units to the wider public in order to effectively function as the driving force behind gender sensitization	Materials for sensitization activities can be coordinated with MoWECF
2	Ministry of Health	Setting up a 6 th service desk in <i>posyandus</i> to provide space for gender sensitization by volunteers to the public	
3	Ministry of Law and Human Rights	Incorporating materials on gender equality into village-level legal awareness programs, etc.	
4	Ministry of Religious Affairs	Integrating materials on gender equality into premarital courses (<i>suscatin</i>), marriage counseling (<i>bimwin</i>), etc.	

Source: Compiled from interviews

In implementing the sensitization activities, government ministries and agencies should engage with civil society organizations, PKK, religious leaders, influential community figures, traditional leaders, social workers and village facilitators.²³² Individuals from the community should also be involved as they are considered to be more effective as champions to the cause, and therefore can set an example for their immediate environment.²³³

Public engagement and outreach to the wider public is necessary as gender equality should not matter only to civil society organizations working on the issue on a daily basis.²³⁴ Outreach on gender equality must extend to villages and local neighborhoods, and even to remote, outermost and frontier areas.²³⁵

2.3.2. Marriage Literacy

When a marriage is built without a financial foundation, which may lead to domestic violence, it would be hard for a woman to decide whether to divorce owing to her economic dependence on the husband. Child brides will not only be ones to face post-divorce financial hardship, but also adult women who enter into marriages without adequate wherewithal.²³⁶ If the financial woes are weighed against the number of children to be fed, the cycle of child marriage will continue when the parents see it as a way out of their money troubles.

In addition to interventions to address socio-economic disparities, the state at the same time must provide marriage literacy services or marriage education for prospective parents.²³⁷ To have sufficient marriage literacy, lessons should cover household financial preparedness, and parenting, including the parents' obligation to prevent child marriage. Another important

232 Among others, conveyed by Khairani, Flower Aceh, 4 April 2020; Kalis Mardiasih, influencer, 5 March 2020; and Fahri Salam, Tirto.id journalist, 27 February 2020.

233 Interview with Hartoyo, 12 March 2020.

234 Interview with Fahri Salam, Tirto.id journalist, 27 February 2020.

235 Among others, conveyed by Kalis Mardiasih, influencer, 5 March 2020; Sonya Hellen, Khairani, Flower Aceh, 4 April 2020; Rita Pranawati, Commissioner, KPAI, 27 March 2020; and Rahayu Saraswati, Member of DPR RI for 2014-2019, 2 March 2020.

236 Interview with Cania Citta, influencer, 21 March 2020.

237 Interview with Cania Citta, influencer, 21 March 2020, and with Anggara Suwahju, Executive Director of ICJR for 2017-2019, 3 March 2020.

subject is the spouse's contributive role when the wife performs the reproductive functions, and shared household responsibility between partners.²³⁸

The marriage literacy program proposed as an intervention in this section appears to be related to the MoRA's program on Guidance for School-Age Adolescents. Implemented by KUA, the program aims to prevent child marriage and premarital sexual intercourse. The program's target groups are school-age children, youth activists, mosque youth groups, and so on. The program provides modules and syllabi, training for service providers, and capacity building to foster networks with stakeholders. Unfortunately, the scope of the program is still limited due to budget constraints.²³⁹

However, the extent to which the available modules and syllabi are in line with the proposed marriage literacy intervention, requires further assessment. Programs that have been implemented should be reviewed through monitoring and evaluation in order to increase effectiveness.

2.3.3. Massification of Progressive Religious Understanding

Public awareness-building is necessary to counter the barrage of information and campaigns supporting child marriage that go against efforts to reduce gender inequality. The massification of progressive religious understanding should be done as widespread as possible without having to start from scratch as support is already widely available for this sort of intervention.²⁴⁰ However, the mainstreaming of progressive religious thinking that promotes justice and equality is still considered not extensive enough to counter discriminatory religious beliefs.²⁴¹

In this context, the state is expected to strengthen progressive communities in order to disseminate views and ideas that advance gender equality. The state security approach in this situation would not be appropriate as it will only further consolidate religious fundamentalist groups, and prevent the State from seeing through their discriminatory views of women, and from considering it as an issue that needs to be addressed.²⁴²

Non-progressive religious figures do exist in society, and they should be convinced to play a contributing role towards achieving gender equality.²⁴³ This among others can be done through forums that promote interfaith harmony. It is not the time for religious leaders to be preoccupied simply on harmonious coexistence. They need to dialogue and communicate on common issues, including the need to end child marriage as an entry point to fostering interfaith harmony.²⁴⁴

238 Interview with Tri Hastuti Nur Rochimah, Secretary of PP Aisyiyah, 29 April 2020.

239 Interview with M. Adib Mahrus, Sub-Section Head for Harmonious Families, Directorate of the Development of KUA and Harmonious Families, Directorate General of Muslim Community Development, MoRA, 24 March 2020.

240 See identification of available support in Section A of this chapter.

241 Interview with Marzuki Wahid, Fahmina Institute Cirebon, 21 March 2020.

242 Interview with Achmad Hilmi, researcher at Rumah KitaB, 31 March 2020.

243 Interview with Melli Darsa, lawyer, 9 April 2020; and with Nila Wardani, RUMPUN Malang, 28 April 2020.

244 Interview with WB, Confucian organization, 20 March 2020.

3. Response

Responses that seek to minimize the negative consequences of child marriage will in turn afford children with the opportunity to lift themselves out of poverty and the state of ignorance.

This needs to be done, considering that child marriage cannot be eliminated within a short span of time. The government aims to reduce the prevalence of child marriage by 2.46 percent, from 11.2 percent to 8.74 percent, within five years. This means that there will be no end in sight of child marriage as yet, despite ongoing prevention efforts.

Many studies related to child marriage do not specifically touch on the response dimension. Not responding to the plight of child brides will mean that they will continue to suffer from the deleterious consequences of marrying young. In the event that child marriage is unavoidable, for example when the court grants marriage dispensation, the matter should not be dismissed without taking remedial actions.²⁴⁵

3.1. Affirmative Action

This study identifies interventions necessary for handling children who are victims of child marriage, which include data collection and affirmative action.²⁴⁶ Some of these handling interventions will work if they are reinforced by preventive interventions.

Affirmative action should be a form of compensation for the discrimination experienced by victims of child marriage. Thus far, there has been no specific response to assist children who have entered marriage. Child marriage can lead to victims losing all hope of carving a better future due to the negative consequences that comes with it. Not to mention the adverse implications on sexual and reproductive health, as well as the likelihood of experiencing gender inequality throughout their lives.

Affirmative action can be carried out by optimizing existing government programs in order to effectively deal with socio-economic inequalities. However, considering that the response dimension is a new component proposed in this study, it should be properly implemented to avoid the impression of incentivizing the practice of child marriage.

Proposed affirmative actions for victims of child marriage are provided in the table below:

245 Interview with Hartoyo, Suara Kita, 12 March 2020.

246 Affirmative action is a temporary specific action...and can be terminated...

Table 8. Affirmative Action for Victims of Child Marriage

No.	Affirmative Action	Relevant Institution	Supporting Intervention
1.	Enrolling children who have entered marriage or have had children of their own into education programs (formal/inclusive schooling, middle and high school equivalency programs, skills courses, etc.) by offering scholarships or other facilities for resuming their education	Ministry of Labor Ministry of Education and Culture Local education offices	::Synergies between local government and civil society for awareness-building activities with a view to stop the bullying of these children ::The MoEC makes it an obligation for schools to reaccept students who dropped out because of marriage
2.	Opening up job opportunities for couples or children to be able to earn additional income, either part-time or full-time work	Ministry of Labor Corporations	Availability of job vacancy information
3.	Including victims of child marriage into the list of social protection program beneficiaries (PKH, BPNT, etc.) in an effort to maintain family welfare	Ministry of Social Affairs	Regular supervision of social protection program beneficiaries
4.	Registering victims of child marriage as recipients of health insurance premium waiver benefit (PBI)	Ministry of Health	Regular supervision of social protection program beneficiaries
5.	Providing accessible reproductive health services when pregnant	Ministry of Health	Synergies between local government and civil society for awareness-building activities with a view to stop the bullying of these children

Source: Compiled from interviews

3.2. Data Collection

The aforementioned affirmative actions ultimately boil down to the need for data on child brides. Unregistered marriages will complicate matters as they are not recorded in the KUA report. Data should therefore be collected at the village level on girls whose marriage goes unregistered.²⁴⁷

In addition, the court of justice as the last stronghold for preventing child marriage needs to work closely in providing data and information on marriage dispensations that it has granted. Based on these data, government ministries and agencies, and local governments can then take affirmative action that the child needs.²⁴⁸

The available data will provide the basis for MoWECP to carry out further coordination with other ministries/agencies, and other relevant institutions to take the necessary actions. Coordination makes sure that affirmative action is followed up, with proper supervision and the right intervention for parents in a bid to prevent them from marrying off other children.

²⁴⁷ Interview with Rohika Kurniadisari, 2nd echelon official to the Deputy for Child Growth and Development, MoWECP, 30 April 2020.

²⁴⁸ Interview with M. Adib Mahrus, Sub-Section Head for Harmonious Families, Directorate of the Development of KUA and Harmonious Families, Directorate General of Muslim Community Development, MoRA, 24 March 2020.

There is also the option of collecting data nation-wide by creating a special cluster within MoWECP's existing *Simfoni* online information system. If this is realized, the data collected by Puspaga, a community-based service provider, and village officials in various regions, can directly be made available without having to go through a multitiered data collection process.

The four major undertakings to be carried out through various interventions in the three components of the legal system essentially consist of two key elements: prevention and response. More interventions are needed in terms of prevention, which in general target the root causes of child marriage.

Even though there is only one specific action in terms of response, it is still a concrete step towards saving children unable to avoid child marriage, including those that occur through the marriage dispensation mechanism.

C. Determining Sanctions for the Effective Elimination of Child Marriage

In the discourse on the elimination of child marriage, the issue on the imposition of sanctions against perpetrators of child marriage has often been raised. This study examines the discourse. There was the consideration to include sanctions in prevailing laws and regulations, and to enforce existing forms of social sanctions.

1. Facts on Sanctions against Child Marriage in Law and Social Norms

In normative terms, Article 288 of KUHP is intended to provide protection to girls from the threat of forced marriage. However, the effectiveness of 'protection' meant in the said provision is still called into question as the perpetrator will only be convicted if the minor has suffered injuries due to intercourse consummated in the marriage.²⁴⁹

A clause in the Marriage Law regulates on the annulment of marriage if there is an obstruction to getting married. Although it is not expressly intended as a sanction for child marriage, the clause can still be applied. However, given the grave social and psychological consequences, the preferred approach would be prevention, rather than repression, whenever possible.²⁵⁰

Meanwhile, community-level initiatives to prevent child marriage are made through the introduction of policies at the local level, right down to the villages. For example, a village regulation in West Lombok, NTB, governs on sanctions. Customary sanctions are typically in

249 See section on legal framework in this study.

250 Dian Kartikasari, Secretary General of KPI for 2009-2019, 21 March 2020.

the form of fines imposed on the parents and the underage couple. The type and amount of penalty are determined entirely by the local community.²⁵¹

Despite the relatively steep customary fines, their effectiveness has yet to be proven, especially among the well-heeled who can afford any amount of penalty. In addition, such penalties seem out of place considering their poverty situation, which is the main driver of child marriage in the region.

A 2019 study revealed that sanctions against children who enter marriage have the potential to instead violate their rights. Fines or social sanctions laid out in several village regulations can also infringe upon the dignity of the married child.²⁵²

Parents who marry off their children before reaching the age of 18 may be subject to social sanctions, even in the absence of any specific regulation. Social sanctions are imposed on the basis of an agreement reached by the local community—thanks to civil society’s unflagging campaigning.²⁵³ An example of social sanction is the neighbors’ refusal to attend the wedding reception. However, this social sanction is not without its consequences. It is suspected that parents have managed to circumvent the sanctions by not registering the marriage.²⁵⁴

In addition, some social sanctions are considered to be mistakenly targeted as they instead punish the child. For example, the child becomes traumatized as people make fun of her for (maybe) being pregnant out of wedlock, or is bullied when she drops out of school. Wrongly imposed sanctions that instead target the child will adversely affect her psychological well-being, and therefore should be evaluated through the right interventions.

2. Stakeholder Perceptions of Sanctions against Perpetrators of Child Marriage

The perpetrators of child marriage include parents, family members and other enabling actors, such as community figures, religious leaders, and traditional elders. Several local or village regulations have been found to actually impose sanctions on the child. These regulations should be reexamined as the child should not be punished.

In addition, there are two standpoints on the issue of sanctioning perpetrators. First, those who disagree with the imposition of sanctions, and recommend addressing the problem

251 Interview with Nuryanti Dewi, LBH APIK NTB, 7 April 2020.

252 Dwianti F. Putri, *Studi Literatur Peraturan Daerah Pencegahan Perkawinan Anak*, (Jakarta: UNICEF in collaboration with AIPJ2, 2019), as excerpted from the MoNDP/Bappenas, Op. Cit.

253 Among others, Koalisi Perempuan Indonesia in Yogyakarta and NTT. Interview with Dian Kartikasari, Secretary General of KPI for 2009-2019, 21 March 2020.

254 Dian Kartikasari, Secretary General of KPI for 2009-2019, 21 March 2020.

primarily as part of prevention. Second, those who agree with punishing the perpetrator.²⁵⁵

2.1. Are Sanctions Necessary in Any Form?

Sanctions are not recommended on the basis of three considerations. First, the need to emphasize on prevention and awareness. Second, the need to exercise caution when discussing issues that are sensitive to certain circles. Third, not all problems can be resolved through sanctions.

High-level public awareness is far more effective than punishment. It is more important to build public awareness on the negative impacts of child marriage. The state is obliged to educate parents, and equip them with positive parenting skills, and empower them to prevent child marriage. If the state has not done its duty to educate and empower parents, punishment should not be an option.²⁵⁶

“But if we have not completed the parent’s education, we cannot punish them.” Rita Pranawati, Commissioner, KPAI.

Referring to earlier explanations, penalization through local regulations does not instill fear that will deter and prevent child marriage from occurring. This actual fact reinforces the importance of raising public awareness.

Fully informing the public is critical to protect them from violations driven by ignorance or lack of understanding. A person should not be penalized for violations due to ignorance or because they are deceived.²⁵⁷

If the root cause of child marriage is poverty, the government should take affirmative action for parents to prevent them from marrying off their children at an early age, instead of adopting a repressive approach through sanctions. Welfare interventions can be applied in this case, where families are given access to social benefits, parents with employment opportunities, and an education for children through *pesantren* (Islamic boarding school).²⁵⁸

The socio-cultural environment should also be taken into account in order to avoid debate or backlash from religious leaders. These are individuals whose role and engagement in the elimination of child marriage are expected, which is crucial to avoid the possibility of resistance against the law when the issue of penalization is raised, or of perceiving it as a

255 Those who disagreed with the imposition of sanctions included Riri Khariroh, Chair of LKP3A PP Fatayat NU, 24 March 2020; Hartoyo, Suara Kita, 12 March 2020; Nur Rofiah, Alimat, 26 February 2020; Rita Pranawati, Commissioner, KPAI, 27 March 2020; Kalis Mardiasih, Columnist, 5 March 2020; an academic from PKWJ UI, 30 March 2020; Anggara Suwahju, Executive Director of ICJR for 2017-2019, 3 March 2020; WB, Confucian organization, 20 March 2020; Rahayu Saraswati, Member of DPR RI for 2014-2019, 2 March 2020; and Iyat Haryati, KPI Kota Tangerang, 28 April 2020. Opinions in favor of sanctions are from Ghafur Darmaputra, Coordinating MoHDC, 20 March 2020; Dian Kartikasari, Secretary General of KPI for 2009-2019, 21 March 2020; Imam Nakhei, Commissioner, Komnas Perempuan, 22 March 2020; Fahri Salam, Tirto.id journalist, 27 February 2020; Marzuki Wahid, Fahmina Institut Cirebon, 21 March 2020; Nursyahbani Katjasungkana, Board of Trustees, LBH APIK Association, 1 April 2020; Lenny N. Rosalin, MoWECP Deputy for Child Growth and Development, 30 April 2020; Cania Citta, influencer, 21 March 2020; Anindya Restuviani, Hollaback! Jakarta, 21 March 2020; and Fen Budiman, DPP API Kartini, 18 March 2020.

256 Riri Khariroh, Chair of LKP3A PP Fatayat NU, 24 March 2020, and Rita Pranawati, Commissioner of KPAI, 27 March 2020.

257 Nur Rofiah, Alimat, 26 February 2020.

258 Interview with Riri Khariroh, Chair of LKP3A PP Fatayat NU, 24 March 2020, and Hartoyo, observer of marginalized groups, 12 March 2020.

form of legitimizing immoral acts.²⁵⁹

Even though child marriage is simply wrong, the finger should not be pointed at the child, nor should the child be summarily sent to prison. Punishment will only overcrowd the prison, and still leave the problem unresolved. Socio-economic interventions on the other hand are necessary for tackling the issue of child marriage.²⁶⁰

“When Confucius first became the Minister of Justice, he was uncompromising, every wrong was punished. He eventually realized that it would not solve the problem. When he was criticized by the people, within 100 days, the streets were opened, if people wanted to steal, houses had their doors opened, yet no one stole.” WB, a Confucian organization.

When a sentence is not handed down, it is not meant to protect the guilty party. It is intended to prevent a person from being punished for his shortcomings, at a time when others did not offer any help.

2.2. Sanctions against the Perpetrator

As a civil status event, marriage cannot be subject to punishment unless it involves breaking the law, such as falsification of identity, fraud and violence. The imposition of sanctions must also conform to the applicable laws and regulations.

Views that support the sanctioning of perpetrators of child marriage, among others, require that the element of intent be fulfilled. If a minor enters marriage out of compulsion, the case must be exempted from conviction by first seeking the court’s opinion.²⁶¹

When a girl under compulsion marries at a young age, the word “compulsion” and how it is interpreted remains problematic. The term “compulsion” was in fact challenged in a judicial review filed with the Constitutional Court in 2014 in order to limit the scope of its meaning to when it involves premarital pregnancy, but the petition was denied by the Constitutional Court.²⁶²

If a marriage is sought on the basis of compulsion and dispensation is granted by the court, the marriage can therefore legally take place. However, if the court decides otherwise, and the marriage still proceeds unregistered, it will be punishable in pursuance to the Child Protection Law and the KUHP—if there has been carnal knowledge with the child.

Based on the different types of sanctions imposed, support for penalization does not reflect an agreement on which sanctions are considered appropriate. It is part of contributing

259 Interview with Kalis Mardiasih, columnist, 5 March 2020, and academic from UI, 30 March 2020.

260 Interview with Anggara Suwahju, former Executive Director, ICJR, 3 March 2020, and WB, a Confucian organization, 20 March 2020.

261 Ghafur Darmaputra, Coordinating Deputy for the Protection of Women and Children, Coordinating MoHDC, 20 March 2020.

262 See Constitutional Court Decision No. 30-74/PUU-XII/2014.

towards eliminating child marriage. Although imprisonment is included in the list of recommended sanctions, not all concur, considering that its effectiveness remains doubtful. Having a deterrent effect may not necessarily lead to positive impacts. We only need to look at the actual situation of correctional institutions (prisons), where conditions are miserable and overcrowded. Similarly, social sanctions, an issue that have been prominently raised, instead mistakenly target those who should not be penalized in the first place.

In addition, approval towards the imposition of sanctions is not always followed by proposed types of sanctions. Those in favor of sanctions do not necessarily suggest the types of possible sanctions. A spectrum of sanctions was in fact put forward, from threat of penalty, to administrative and social sanctions.

Those in support of punishment have offered different legal grounds for penalization. Some have suggested the insertion of new punitive clauses, while others proposed the penalties enumerated in the KUHP and the Child Protection Law. The RUU P-KS is proposed as one of the new legal bases for making child marriage a punishable act.

The following presents the types of proposed sanctions, or threat of punishment:

Table 9. Proposed Sanctions and Rationale

No.	Type of Sanction	Rationale
1	Prison sentence	<ul style="list-style-type: none"> In conformity with the penalty for forced marriage in the RUU P-KS Sentencing can be handed down in just a matter of days to create a deterrent effect
2	Fine	This sanction does apply to perpetrators who are well-situated financially
3	Community service	Overcapacity prisons, and not all offenses should end with imprisonment
4	Any other sentencing apart from incarceration, such as education and rehabilitation	A prison sentence does not have a deterrent effect, and therefore punishment should lean more towards educating the perpetrator
5	Counseling for perpetrators	In line with the sentencing for forced marriage in the RUU P-KS
6	Confiscation of transaction money in child marriage	Sanctions are imposed when the child marriage is sought for financial gain. The transaction money is confiscated from the parents and the person handing over the money. Sentencing must be followed by annulment of marriage
7	Termination of parental rights	Proposed with no further explanation of the rationale
8	Revocation of political rights	Proposed with no further explanation of the rationale
9	Removed from job position	Proposed with no further explanation of the rationale
10	Administrative sanction	Imposed on government officers who allowed the child marriage to take place
11	Administrative fine	Still needs to be reviewed, but no respondent suggested this particular type of penalty
12	Customary sanction	Proposed with no further explanation of the rationale
13	Social sanction	<ul style="list-style-type: none"> Imposed when the marriage did not take place by force Determined not through regulation, but public awareness

Source: Compiled from interviews

Those who approve punishment cited three main options for a legal basis. First, to use existing provisions in prevailing laws and regulations such as the KUHP and the Child Protection Law. Second, the RUU P-KS for the sentencing of perpetrators of child marriage. Third, no reference to any regulation except as an organic response from society. This inevitably leads to the creation of new social values through awareness interventions.

In order to ensure that sanctions are effective, while encouraging public compliance to not marry their children off at an early age, sanctions should be directed at the perpetrator acting as the go-between or enabler of child marriage, including those who allowed the marriage to happen. Sanctions should therefore be the last resort, while raising public awareness in particular is an imperative.

2.3. Education or Punishment

The rationale underpinning the objections to a punitive approach is that awareness-raising should take precedence over punitive measures. The limited options available, especially due to poverty and lack of knowledge, are correlated with the State's half-hearted prevention efforts. The root causes of child marriage must be urgently addressed in order to preclude any intention to resort to child marriage as a way out to problems. Punishment is not considered strategic, and is even contrary to the synergistic approach that requires the widest possible engagement of the different elements of society.

Those in favor of punishment suggested a range of sanctions from threat of penalty, to administrative and social sanctions. The proposed threat of punishment includes imprisonment, which some disapprove of. Meanwhile, in practice, the imposition of fines is considered not as effective, and therefore the importance of public awareness to deal with this issue.

Given the different views agreeing with punishment, there is no common ground on the appropriate sanction and legal basis that can be used to achieve the goals that the revised UUP is intended for. On the other hand, awareness interventions have instead emerged from those in favor of sanctions, especially after weighing on the effectiveness of a punitive approach to eliminate child marriage.

When linked to responses, punishment will be counterproductive to interventions designed to empower girls who are unable to say no to marriage. Instead of saving them, penalization will increase the number of girls who are adversely affected by child marriage, trapped in a situation where gender inequality persists, making them increasingly vulnerable to sexual and reproductive health risks.



CHAPTER VII

CONCLUSIONS AND RECOMMENDATIONS

This study presents stakeholders' perceptions of the interrelatedness between the RUU P-KS and the revised UUP toward efforts aimed at eliminating gender inequality in Indonesia. In addition, it also collects data and information on stakeholders' positive perceptions and support towards the RUU P-KS and the implementation of the revised UUP, as well as the problems and challenges that can be resolved through the RUU P-KS. The effectiveness of the revised UUP in ending child marriage is also expounded through views and opinions on the various responses, interventions and actions that should be taken as follow-up to the revised UUP.

The study found that the RUU P-KS and the revised UUP are of paramount importance to the achievement of gender equality, both directly and indirectly. Nevertheless, the bill on one hand is considered to be targeting issues that sidetrack from efforts to eliminate gender inequality. Sexual violence is a manifestation of gender inequality. On the other hand, raising the minimum age of marriage affords girls the much-needed opportunity to break free from the shackles of inequalities of access, as well as the space for participation in development for a better future.

Support for the passage of the RUU P-KS came from various groups, including public service providers, civil society organizations, women's rights organizations, journalists, academics, corporations, professional groups (health workers, psychologists, and others), youth groups, survivors and their families, national human rights institutions, government ministries and agencies, religious and *penghayat kepercayaan* organizations, and religious figures who are the subjects of this research.



Support for the RUU P-KS is primarily built upon the urgency of reforming the legal system with a view to remove the barriers to handling cases of sexual violence. The many hurdles in the components of legal culture, legal structure and legal substance severely hinder access to justice for victims of sexual violence. Tinkering with the law in a piecemeal fashion is simply not enough as it needs to be addressed through an all-encompassing legal framework for handling cases of sexual violence in the RUU P-KS Bill.

In terms of the legal culture component, the use of sexual history as evidence in court, and law enforcement's lack of insight on the issue of sexual consent often disqualifies women's experiences as victims. As for the component of formal legal substance, the reporting and evidentiary mechanisms often impose a burden of proof on the victim. The absence of other witnesses apart from the victim typically provides an excuse to declare the victim's statement insufficient evidence as a single witness is not considered a witness. The existing procedural law on the other hand does not regulate on the assistance mechanism for victims of sexual violence who experience multiple layers of trauma, nor does it specify the procedure for the police investigation report. It also does not expressly enumerate the rights of victims as it has for the rights of the perpetrator. In addition, psychologists play a crucial role in establishing evidence of sexual violence, specifically the psychological impact on the victim other than psychiatric symptoms or mental disorders.

In light of the aforementioned concerns, the passage of the RUU P-KS into law becomes ever more important, with the hope that it will help address these critical issues through the formulation of norms regulated therein. Furthermore, the inputs offered mainly revolved around improvements to the substance of RUU P-KS, especially the formulation of criminal elements in the nine types of sexual violence.

The RUU P-KS is expected to be the solution to the need for more responsive legal and social systems by positioning women and (or) victims as subjects central to all responses and remedies. The bill is also expected to accommodate other types of sexual violence that fall outside the ambit of the Criminal Code or other laws. In terms of substance, the bill covers prevention, the crime of sexual violence, victim's rights, specific procedural rules for cases of sexual violence, monitoring, and sentencing. As such, it is considered a legal breakthrough that provides a comprehensive way out for dealing with sexual violence.

This study confirms the negative consequences of child marriage, which the revised UUP is expected to help overcome. It also records the empirical experiences of women affected by child marriage who are trapped in exploitative employment, such as commercial sex work. This is not the kind of work that one would want, unless forced to do so as one is left with no other options given the lack of academic qualifications and skills to access decent work.

The three major expectations placed on the revised UUP are the following: 1) removing the

adverse consequences of child marriage; 2) protecting sexual and reproductive health and rights; and 3) reducing gender inequality. These need to be operationalized through various efforts with respect to the prevention of and response to child marriage.

Ten interventions that need to be carried out have therefore been identified: 1) improving public welfare; 2) expanding access to education; 3) prevention through civil registration; 4) SRHR education in the educational curriculum; 5) campaigning for age of maturity for marriage; 6) providing services to fulfill rights related to sexual and reproductive health; 7) gender sensitization; 8) marriage literacy; 9) massification of progressive religious understanding; and 10) affirmative action and data collection.

The identified interventions mostly revolve around the aspect of prevention. This is in line with the support available as part of specific ongoing efforts, and the fact that none is working on the response dimension. As part of intervention, SRHR education within the educational curriculum and awareness-building on gender equality are expected to contribute to the elimination of child marriage, as well as to the prevention of sexual violence.

The imposition of sanctions as a repressive measure to help end child marriage has been confirmed to be ineffective in preventing and eliminating child marriage. Notwithstanding the views in favor of penalization to discourage child marriage through the use of the formula for the crime of forced marriage or other harmful practices identified and proposed as new forms of crime in the RUU P-KS, criticisms have also been levelled against the imposition of sanctions.

The issue of child marriage should be examined from the main drivers perpetuating the practice. If it is driven by poverty and insufficient knowledge about the deleterious effects of child marriage, public awareness-raising and welfare improvement are considered the most effective interventions in comparison to punitive measures. In terms of prevention, the state should spare no effort in making sure that members of the public are capable of making the right decisions when it comes to child marriage.

Based on research findings, the following recommendations are put forward:

1. To fast-track the discussion and passage of the RUU P-KS through public participation

The RUU P-KS will soon be discussed for approval by the government and legislature! Given the urgency of the bill, it is particularly important to respond to the victim's need for protection and recovery, and to address the barriers to case handling within the existing legal regime. The immediate passage of the bill is a pressing need in an attempt to effectively deal with cases of sexual violence, which includes fulfilling the victim's right to justice and recovery.

Several norm formulations in the bill have been identified, and should be improved, such as clearer boundaries between the different types of crime of sexual violence. The bill should cover emerging forms of sexual violence, such as online sexual violence and practices harmful to sexual and reproductive health, such as female circumcision and child marriage. In addition, the bill is expected to also address sexual and reproductive health issues, including access to safe abortion, and to contraceptive services without discrimination, and a reduction in the maternal mortality rate (MMR) in Indonesia.

Another issue that the bill needs to anticipate concerns the formulation of appropriate and effective norms. Only then can the bill be smoothly and effectively implemented.

2. To improve victim recovery services through a one stop crisis center

The specificity of sexual violence and victim's needs should be taken into account in reforming the legal system. This means the urgent need to improve the referral system for victim recovery for a more integrated and unified response and recovery mechanism that puts victims and their rights at the heart of service delivery. Apart from an integrated response, improvements should also extend to law enforcement and service provider personnel, both in terms of quantity and quality.

3. Comprehensive and holistic government efforts in preventing and responding to sexual violence and child marriage by focusing interventions on their root causes

Interventions aimed at removing the root causes of sexual violence and child marriage, in terms of response and prevention, require the government and other stakeholders to adopt a synergistic approach and to foster multistakeholder cooperation. This is an effective approach for consolidating stakeholders. It allows for the division of roles among stakeholders, including in reaching out to target groups for them to gain agency and contribute towards ending child marriage, and expanding stakeholder engagement in interventions for the effective operationalization of the two instruments.

Due to the multidimensional nature of sexual violence and child marriage, interventions should also deal with the cognitive aspects by building public knowledge and awareness, specifically on the issue of sexual violence and child marriage. In addition, identifying the key determinants in a given region is crucial to allow national and local governments to develop the right interventions.

4. Policy harmonization at the national, local, and village level to support the elimination of child marriage and sexual violence

The formulation of the legal substance that governs on the elimination of sexual violence (RUU P-KS) and age of maturity for marriage (revised UUP) at the national level is not enough to end sexual violence and child marriage. From the national to sub-national level, policies

should be harmonized in order to prevent and respond to sexual violence and child marriage. Local governments in particular must pay serious attention to the root causes in their respective regions, which should immediately be resolved to stop people from perpetrating child marriage and sexual violence.

Particularly with regard to child marriage, the imposition of sanctions through local regulations, including at the village level, needs to be reviewed. A repressive approach that is not aligned to government's preventive efforts may instead create opportunities for the practice of child marriage to continue, especially when the social, economic and political circumstances leave families with little choice for leading dignified lives.

5. To not delay the provision of comprehensive SRHR education all levels of education

There is nothing new with this recommendation as it has been put forward since the past 40 years. Several indicators measuring the country's development achievements, such as maternal and infant mortality rates, gender gap index, and human development index, which have been less than encouraging, clearly demonstrate that the need to act on the recommendation can no longer be postponed.

Efforts to protect sexual and reproductive health and rights will remain at the normative level if this recommendation is not acted upon. Synergies among stakeholders for eliminating child marriage will be stifled, if educators are not involved as they have the potential to reach out to 80 million children across Indonesia, and thus allowing them access to 12-year compulsory education. Likewise, the prevention of sexual violence will continue to face hurdles. The Ministry of Education and Culture therefore needs to take systematic steps toward realizing comprehensive SRHR education at all levels of education.

6. To introduce affirmative action, and collect data on responses for assisting female victims of violence, including child marriage

Gender inequality is an overriding factor that increases women's vulnerability to violence and child marriage. Women will not be able to extricate themselves from such dire situations if the state does not take affirmative action to pull them out of their predicament. Government ministries and agencies must initiate affirmative action in accordance with their respective duties and functions in responding to this issue. For example, school-based gender sensitization, dissemination of information on rights and how they can be accessed, scholarships to continue education, skills training on entrepreneurship and learning to be independent, and others.

Data collection therefore can serve as an entry point for providing victims with the necessary support. Data can be sourced from service providers, including hospitals and law enforcement institutions. The database on violence against women and children maintained by MoWECF

needs to be developed further as a medium for delivering data and information on female victims of sexual violence and child marriage.

Regarding cases of child marriage, data can be gathered from court decisions granting marriage dispensation, from records kept by village officials to identify unregistered marriages, and from local service providers. In cases where marriage dispensation is granted, the court should order the government through the relevant ministries and agencies to take affirmative action for the child concerned.

7. To undertake efforts to prevent and respond to sexual violence and child marriage

For certain types of sexual violence—verbal sexual harassment and forced marriage—it is necessary to consider other approaches, apart from criminal sanctions. Specifically for child marriage, public awareness-raising, welfare improvement, and widening access to education are interventions considered more effective in curbing child marriage than meting out severe punishment.

The state has the obligation to equip people with the knowledge and ability to prevent sexual violence and child marriage, both through awareness-raising and reducing inequality. Regarding sexual violence, the government needs to take strategic steps for the early prevention of sexual violence, while finalizing discussions of the RUU P-KS Bill at the legislative and executive levels.

Meanwhile, the nine interventions for child marriage prevention identified in this study need to be consolidated by the government through MoWECP. It should be accompanied by supervision by an authorized body in order to ensure that interventions are geared at attaining the end goal of eliminating child marriage. At the same time, these interventions can contribute to the prevention of sexual violence.

8. To optimize government's role in strengthening multistakeholder cooperation

The government needs to optimize its role in preventing child marriage and responding to sexual violence. This can be done by fostering collaborative ties with relevant stakeholders working towards preventing and ending sexual violence and child marriage.

The nine interventions on preventing child marriage identified in this study must be carried out by government institutions and other relevant stakeholders whose duties and functions are related to efforts aimed at reducing inequality, raising public awareness and building public knowledge, and fulfilling the rights to sexual and reproductive health. In their implementation, multistakeholder cooperation is necessary to ensure that the expectations placed on the revised UUP can be effectively met.

For example, the MoEC's 12-year compulsory education program requires support from other government ministries and agencies, such as the Ministry of Public Works for providing road infrastructure; the Ministry of Health for health facilities to make sure that students are not precluded from going to school for health reasons; and the Ministry of Religious Affairs for updating religious educational materials that are oriented towards character building for broadening horizons, and instilling the values of tolerance and humanity.

REFERENCES

Books, Journals, Reports:

- Alex Irwan, *Perisai Perempuan: Kesepakatan Internasional untuk Perlindungan Perempuan*. Jakarta: Asosiasi LBH APIK Indonesia, 1996.
- Barlett, Katharine T. and Rosanne Kennedy (Ed.), *Feminist Legal Theory: Readings in Law and Gender*. USA: Westview Press Inc., 1991.
- BPS, Kementerian PPN/Bappenas, UNICEF, dan Puska UI, *Pencegahan Perkawinan Anak: Percepatan yang Tidak Bisa Ditunda*. Jakarta: BPS, 2020.
- CEDAW South East Asia, "Substantive Equality". [Http://cedawsouthasia.org/about-cedaw/core-concepts/](http://cedawsouthasia.org/about-cedaw/core-concepts/). Accessed 1 August 2020.
- Collier, Rohan, *Pelecehan Seksual: Hubungan Dominasi Mayoritas Dan Minoritas*. Yogyakarta: Tiara Wacana Yogya, 1998.
- Correa, Sonya and R. Petchesky: 1994, "Reproductive and Sexual rights: A Feminist Perspective," in Gita Sen, A. Germain and L. C. Chen (eds.), *Population Policies Reconsidered: Health, Empowerment, and Rights*. Boston: Harvard University Press, 1994.
- Forster, Christine, and Vedna Jivan, *Gender Equality Laws: Global Good Practice and a Review of Five Southeast Asian Countries*. Bangkok: United Nations Development Fund for Women (UNIFEM) East and Southeast Asia Regional Office, 2009.
- Dio Ashar Wicaksana and Muhammad Rizaldi, *Asesmen Konsistensi Putusan Pengadilan Kasus-Kasus Kekerasan Terhadap Perempuan*. Jakarta: MaPPI FHUI and LBH APIK Jakarta, 2015.
- Dwianti F. Putri, *Studi Literatur Peraturan Daerah Pencegahan Perkawinan Anak*. Jakarta: UNICEF in collaboration with AIPJ2, 2019. As excerpted from Kementerian PPN/Bappenas, *Strategi Nasional Pencegahan Perkawinan Anak*. Jakarta: Kementerian PPN/Bappenas, 2020.
- E. Kristi Poerwandari, *Mengungkap Selubung Kekerasan: Telaah Filsafat Manusia*. Bandung: Penerbit Yayasan Eja Insani, 2004.
- _____, *Penguatan Psikologis Untuk Menanggulangi Kekerasan Dalam Rumah Tangga dan Kekerasan Seksual: Panduan Dalam Bentuk Tanya Jawab*. Jakarta: Program Kajian Wanita Program Pascasarjana Universitas Indonesia, 2006.
- _____ and Ester Lianawati, *Petunjuk Penjabaran Kekerasan Psikis: Buku Saku untuk Penegak Hukum*. Jakarta: Pusat Studi Kajian Wanita Pascasarjana UI, 2010.
- Eddy O.S. Hiariej, *Teori & Hukum Pembuktian*. Jakarta: Penerbit Erlangga, 2012.
- Ema Mukarramah, "Menggagas Payung Hukum Perlindungan Korban Kekerasan Seksual." In *Jurnal Perempuan Edisi 89 Vol.21 No.2* (March 2016): 101-119.
- Forum Pengada Layanan, *Lembar Fakta Kekerasan Seksual dalam Angka: 1, Kekerasan Seksual dalam Catahu 2017-2019*. Jakarta: Forum Pengada Layanan, 2019, unpublished.
- _____, *Lembar Fakta Kekerasan Seksual dalam Angka: 2, Sembilan Kekerasan Seksual 2017-*

- 2019, (Jakarta: Forum Pengada Layanan, 2019), unpublished.
- Friedman, Lawrence M., *The Legal System: A Social Science Perspective, Third Edition*. New York: Russel Sage Foundation, 1987.
- Hendri Sayuti, "Hakikat Affirmative Action dalam Hukum Indonesia (Ikhtiar Pemberdayaan yang Terpinggirkan)". In *Jurnal Menara*, Vol. 12 No. 1 (January-June 2013): 41-47.
- Hull, Terence H., et al., *Pelacuran di Indonesia: Sejarah dan Perkembangannya*, (Jakarta: Pustaka Sinar Harapan & The Ford Foundation, 1997), p. 110.
- Hunter, Rosemary and Kathy Mack, "The Exclusion and Silence". In Naffine, Ngaire and Rosemary J Owens, (Ed.), *Sexing the Subject of Law*. Sydney: LBC Information Services, 1997.
- JKP3, *Booklet Mengapa DPR dan Pemerintah Harus Segera Membahas dan Mengesahkan RUU P-KS Vol. II*. Jakarta: JKP3, 2018.
- Kementerian Pemberdayaan Perempuan dan Perlindungan Anak RI, *Profil Anak Indonesia 2018*. Jakarta: Kementerian Pemberdayaan Perempuan dan Perlindungan Anak RI, 2018.
- Komnas Perempuan, *15 Bentuk Kekerasan Seksual: Sebuah Pengenalan*, (Jakarta: Komnas Perempuan, n.d.). https://www.komnasperempuan.go.id/file/pdf_file/Modul%20dan%20Pedoman/Kekerasan%20Seksual/15%20BTK%20KEKERASAN%20SEKSUAL.pdf. Accessed 16 May 2020 at 11.05 Indonesian time.
- _____, *Kekerasan Meningkat: Kebijakan Penghapusan Kekerasan Seksual untuk Membangun Ruang Aman bagi Perempuan dan Anak Perempuan*, Catatan Kekerasan terhadap Perempuan Tahun 2019, 6 March 2020. Jakarta: Komnas Perempuan, 2020.
- _____, *Korban Bersuara, Data Bicara Sahkan RUU P-KS sebagai Wujud Kotmimen Negara*, Catatan Kekerasan terhadap Perempuan Tahun 2018, 6 March 2019. Jakarta: Komnas Perempuan, 2019.
- _____, *Pemotongan dan Perlukaan Genitalia Perempuan: Dalam Persimpangan Antara Tradisi dan Modernitas*. Jakarta: Komnas Perempuan, 2018.
- Kunthi Tridewiyanti, et al., (Ed.), *Mewujudkan Perlindungan Hak-hak Perempuan Korban dalam Kebijakan: Himpunan Kertas Posisi dan Kajian dari Berbagai Kebijakan Tahun 2010-2013*. Jakarta: Komnas Perempuan, 2014.
- LBH APIK Jakarta, *Negara Harus Serius Melaksanakan Komitmen Perlindungan Perempuan Korban Kekerasan Berbasis Gender*, Catatan LBH APIK Jakarta Berdasarkan Pengalaman Penanganan Kasus dan Advokasi 2019. Jakarta: LBH APIK Jakarta, 2019.
- Luhulima, Achie Sudiarti, "Hak Perempuan dalam Konstitusi Indonesia." Dalam *Perempuan dan Hukum: Menuju Hukum yang Berperspektif Kesetaraan dan Keadilan*. Jakarta: Yayasan Obor Indonesia, 2006.
- MAPPI FH UI, *Executive Summary Penelitian Konsistensi Putusan Perempuan*. Jakarta: MAPPI FH UI, 2019. [Http://mappifhui.org/wp-content/uploads/2019/06/Executive-Summary-KS.pdf](http://mappifhui.org/wp-content/uploads/2019/06/Executive-Summary-KS.pdf). Accessed 21 May 2020.
- _____, *Kekerasan Seksual di Indonesia: Data, Fakta, & Realita*. Jakarta: Australia Indonesia Partnership for Justice and MaPPI FHUI, 2016.

- Nursyahbani Katjasungkana, "Feminist Legal Theory". In *Modul Pelatihan Bantuan Hukum Gender Struktural*. Jakarta: LBH APIK Jakarta, 1995.
- _____, *Kasus-Kasus Hukum Kekerasan Terhadap Perempuan: Sebuah Drama Tentang Patriarki dan Dominasi Laki-Laki*. Jakarta: LBH APIK Jakarta, 2002.
- Office of the Special Advisor on Gender Issues and Advancement of Women. *Gender Mainstreaming: Strategy for Promoting Gender Equality Factsheet*. 2001. <http://www.un.org/womenwatch/osagi/pdf/factsheet1.pdf>. Accessed 12 July 2020.
- Perempuan Mahardhika, *Pelecehan Seksual dan Pengabaian Hak Maternitas pada Buruh Garmen: Kajian Kekerasan Berbasis Gender di KBN Cakung*. Jakarta: Perempuan Mahardhika, 2017.
- R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya, Penjelasan Lengkap Pasal Demi Pasal*. Bogor: Politea, 1996.
- Rhode, Deborah L., *Justice and Gender*. Harvard: Harvard University Press, 1993. As excerpted in Nursyahbani Katjasungkana, *Kasus-Kasus Hukum Kekerasan Terhadap Perempuan: Sebuah Drama Tentang Patriarki dan Dominasi Laki-Laki*. Jakarta: LBH APIK Jakarta, 2002.
- Ratna Batara Munti, "Kekerasan Seksual: Mitos dan Realitas, Kelemahan Aturan dan Proses Hukum, serta Strategi Menggapai Keadilan." In E.Kristi Poerwandari and Rahayu Surtiati Hidayat (Ed.) *Perempuan Indonesia Dalam Masyarakat yang Tengah Berubah: 10 Tahun Program Studi Kajian Wanita*. Jakarta: Program Studi Kajian Wanita Program Pasca Sarjana Universitas Indonesia, 2000.
- Rohan Collier, *Pelecehan Seksual: Hubungan Dominasi Mayoritas Dan Minoritas*. Yogyakarta: Tiara Wacana Yogya, 1998.
- Saparinah Sadli, et al., *Ringkasan Studi Pemantauan Status Kesehatan Seksual dan Kesehatan Reproduksi di 6 Daerah di Indonesia*. Jakarta: Yayasan Kesehatan Perempuan, IRRMA, ARRAW and Ford Foundation, 2008.
- Siti Khoirun Ni'mah, et al., *Memo Kebijakan Sosial Ekonomi INFID 2017: 10 Cara Menurunkan Ketimpangan Gender di Indonesia*. Jakarta: INFID, Koalisi Perempuan Indonesia, OFXAM, 2017.
- Siti Lestari, "Analisis Putusan Terkait Riwayat Seksual Korban atau Stereotype sebagai Dasar Meringankan atau Membebaskan Terdakwa." In Lidwina Inge Nurtjahyo & Choky R. Ramadhan (Ed.), *Kekerasan Terhadap Perempuan Dalam Peradilan Pidana: Analisis Konsistensi Putusan*. Jakarta: Australia Indonesia Partnership for Justice, MaPPI FH UI, LBH APIK Jakarta, and Badan Penerbit Fakultas Hukum, 2016.
- Smart, Carol, *Sociology of Law & Crime, Feminism and The Power of Law*. London and New York: Routledge, 1989.
- Sulistyowati Irianto, "Teori Hukum Feminis." In Sulistyowati Irianto (Ed.), *Hukum Perlindungan Perempuan dan Anak*. Jakarta: USAID & E2J The Asia Foundation, 2015.
- Topo Santoso, *Seksualitas dan Hukum Pidana*. Jakarta: IND-HILL-CO, 1997.
- The Office of the UN High Commissioner for Human Rights, "Summary Reflection Guide on a Human Rights-Based Approach to Health: Application to sexual and reproductive health, maternal health and under-5 child health". <https://www.ohchr>.

org/Documents/Issues/Women/WRGS/Health/RGuide_HealthPolicyMakers.pdf. Accessed 1 August 2020.

The Office of the UN High Commissioner for Human Rights, "The International Bill of Rights". <https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx>. Accessed 1 August 2020.

UN Women, "CEDAW". <https://asiapacific.unwomen.org/en/focus-areas/cedaw-human-rights/faq#substative>. Accessed 1 August 2020.

Women Research Institute, *Mencari Ujung Tombak Penurunan Angka Kematian Ibu di Indonesia*. Jakarta: WRI, 2011.

World Economic Forum, Global Gender Gap Report 2020. http://www3.weforum.org/docs/WEF_GGGR_2020.pdf

Constitutional Court Decisions:

Constitutional Court Decision Number 22/PUU-XV/2017.

Constitutional Court Decision Number 30-74/PUU-XII/2014.

International Human Rights Conventions and Laws:

Concluding Observations of the Committee on the Elimination of Discrimination against Women – Indonesia, 52nd session. <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-IDN-CO-6-7.pdf>.

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/TrafficInPersons.aspx>.

General Recommendation No. 19, Violence against Women, *eleventh session, 1992*. <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

Online Media Articles:

"15 Jenis Kekerasan Seksual terhadap Perempuan". *Tempo.co*, 29 November 2012. <https://nasional.tempo.co/read/444813/15-jenis-kekerasan-seksual-terhadap-perempuan/full&view=ok>. Accessed 16 May 2020 at 11.12 Indonesian time.

"7 Hal Seputar Catcalling yang Paling Sering Ditanyakan." *Womentalk.com*, 29 November 2019. <https://womentalk.com/news-update/articles/7-hal-seputar-catcalling-yang-paling-sering-ditanyakan-yaNIO>. Accessed 21 May 2020.

"Catcalling Adalah Pelecehan Bukan Semata Canda." *Beritagar.id*, 8 October 2017. <https://beritagar.id/artikel/gaya-hidup/catcalling-adalah-pelecehan-bukan-semata-canda>. Accessed 21 May 2020.

"Gaya Hidup Manila Resmi Melarang Catcalling." *Beritagar.id*, 10 July 2018. <https://beritagar>.

id/artkel/gaya-hidup-manila-resmi-melarang-catcalling. Downloaded 21 May 2020.

"Jangan Pernah Goda Cewek 6 Negara Ini akan Menghukummu." *Idntimes.com*, 18 May 2017. <https://www.idntimes.com/news/world/amp/rizal/jangan-pernah-goda-cewek-6-negara-ini-akan-menghukummu>. Accessed 21 May 2020.

"Kekerasan Seksual di Dewas BPJS TK Keberanian Amel adalah Lilin". *Tirto.id*. 22 February 2019. <https://tirto.id/kekerasan-seksual-di-dewas-bpjs-tk-keberanian-amel-adalah-lilin-dhxX> . Accessed 22 June 2020.

"More Indonesian Women in Labor Market Fewer in Politics Gender Gap Report." *The Jakarta Post*, 2 January 2020. <https://www.thejakartapost.com/news/2019/12/30/more-indonesian-women-in-labor-market-fewer-in-politics-gender-gap-report.html>. Accessed 3 June 2020, at 10.29 Indonesian time.

"Perempuan Aceh Bicara Qanun Jinayat." *Beritamanado.com*, 21 December 2014. <https://beritamanado.com/perempuan-aceh-bicara-qanun-jinayat/>. Accessed 15 May 2020, at 20.31 Indonesian time.

"Pernah Jadi Korban Pelecehan di Ruang Publik? Kamu Nggak Sendirian." *Change.org*, 16 July 2019. <https://www.change.org/l/id/pernah-jadi-korban-pelecehan-di-ruang-publik-kamu-nggak-sendirian>. Accessed 21 May 2020.

"Polisi Hentikan Pelaporan Baiq Nuril Soal Pelecehan Seksual." *Cnnindonesia.com*, 18 January 2019. <https://m.cnnindonesia.com/nasional/20190118143956-12-361923/polisi-hentikan-pelaporan-baiq-nuril-soal-pelecehan-seksual>. Accessed 21 May 2020.

"Prevalensi Kekerasan terhadap Perempuan di Indonesia, Hasil SPHPN 2016." *Berita Resmi Statistik No. 29/03/Th.XX*, 30 March 2017.

"Relasi Kuasa Dalam Kasus Pelecehan Seksual di BPJS", *Tirto.id*, 29 December 2018. <https://tirto.id/relasi-kuasa-dalam-kasus-pelecehan-seksual-di-bpjs-tk-dcla>. Accessed 22 June 2020.

"Riset: Kesetaraan Gender Tambah PDB Indonesia US\$135 Miliar di 2025." *Katadata.co.id*, 30 April 2019. <https://katadata.co.id/berita/2019/04/30/riset-kesetaraan-gender-tambah-pdb-indonesia-us-135-miliar-di-2025>. Accessed 19 June 2020, at 09.05 Indonesian time.

"Survei Kekerasan Seksual di Indonesia." *Change.org*, 29 August 2016. <https://www.change.org/l/id/changeorg-indonesia-changeorg-blog>. Accessed 21 May 2020.

"Versi BKKBN Usia 20-21 Tahun Ideal untuk Menikah dari Sisi Biologis." *Merdeka.com*, 17 September 2019. <https://www.merdeka.com/peristiwa/versi-bkkbn-usia-20-21-tahun-ideal-untuk-menikah-dari-sisi-biologis.html>. Accessed 3 June 2020, at 11.11 Indonesian time.

"Vonis Korban Perkosaan yang Gugurkan Kandungan di Jambi Dikritik Tajam." *Voaindonesia.com*, 23 July 2018. <https://www.voaindonesia.com/a/vonis-korban-perkosaan-yang-gugurkan-kandungan-di-jambi-dikritik-tajam/4493385.html>. Accessed 24 May 2020.

APPENDIX

Appendix 1: Research Questions

The scope of the research questions is as follows:

TOPIC ON THE RUU P-KS

A. *Urgency, benefits and contribution of the RUU P-KS*

1. What is your view on the urgency of the RUU P-KS?
2. How can the RUU P-KS benefit female victims in terms of the fulfilment of the rights if it is approved?
3. What issues do you expect the RUU P-KS can overcome?
4. How can the RUU P-KS contribute towards optimizing the role of the government and society in sexual violence prevention and response?
5. How can the bill promote gender equality in society?

B. *The phenomenon of sexual violence, the different types and forms*

1. How do you see the phenomenon of sexual violence in Indonesia?
2. What forms of sexual violence are you aware of?
3. What is the impact of sexual violence?
4. What is your view about the 9 types of sexual violence enumerated in the RUU P-KS?
5. Is there any form of sexual violence that should be included or omitted from the 9 types mentioned? Why?

C. *Challenges and efforts in society for preventing sexual violence*

1. Given the incidents of sexual violence occurring in society, what do you think is the cause?
2. Are there any values, traditions and customs, or even religious interpretations that justify or encourage sexual violence in society?
3. What responses or initiatives have been made to prevent sexual violence and heal victims?
4. Are these responses and initiatives effective enough to prevent sexual violence? How can they be improved?
5. What religious interpretations, values, and traditions support efforts to eliminate sexual violence?

- D. *Handling of sexual violence cases and victim recovery*
1. What are the barriers to handling sexual violence cases and victim recovery?
 2. Are services available, and what about the capacity of service providers?
 3. How is service delivery, in terms of reach and synergy across services?
- E. *Operationalization of the bill once it has been passed into law*
1. If the bill is approved, what are the potential barriers to implementation?
 2. What are the infrastructure and facilities that should be in place to make sure that the law effectively prevents and addresses sexual violence?
 3. Other form of support necessary for the law to be implemented?

TOPIC ON THE REVISED MARRIAGE LAW (UUP)

- A. *Urgency of implementing the revised UUP*
1. What is your view about the revised UUP concerning the minimum age of marriage?
 2. How can public interest be served under the revised UUP?
 3. What issues can be resolved with the passage of the revised UUP?
 4. How does the revised UUP contribute to optimizing the role of the government and society in preventing child marriage and protecting reproductive health?
 5. Can the revised UUP help reduce gender inequality in society?
- B. *Operationalization of the revised UUP and the enabling environment*
1. To what extent would citizens comply with the revised UUP in terms of delaying marriage until the age of majority is reached?
 2. What conditions can promote citizen's compliance with the revised UUP?
 3. What are the challenges to the implementation of the revised UUP? (in terms of social norms, local traditions and customs, and policies)
 4. What measures or solutions can the government and public offer to overcome the challenges?
- C. *Conditions that allow child marriage to occur*
1. How effective is the revised UUP in impeding or reducing the number of marriage dispensation requests in court?
 2. How can the Supreme Court Regulation No.5/2019 on Marriage Dispensation contribute towards the effective implementation of the revised law in regard to petitions for marriage dispensation?
 3. Apart from court-approved dispensation, what other factors contribute to child marriage? Is there a particular contributing factor that society condones to legitimize child marriage?

D. Sanctions against perpetrators of child marriage

1. Are sanctions necessary for the perpetrator of child marriage?
2. What form of deterrent is considered effective for eliminating child marriage?

E. Challenges and actions in society for eliminating child marriage

1. How does religion see child marriage?
2. What role do religious figures play in supporting the implementation of the UUP, specifically on the minimum age of marriage?
3. As child marriage is still prevalent in society, what do you think are the causes?
4. Are there any social values or mindset, traditions or customs, or even religious interpretations that justify or encourage the practice of child marriage?
5. What sort of religious interpretations, values, and traditions support efforts to eliminate child marriage?
6. What responses or initiatives have the government, public, and religious figures undertaken in preventing child marriage?
7. Are the responses and initiatives effective enough to prevent child marriage? What should be improved?

Appendix 2: Research Respondents

List of Respondents

No	Name	Gender	Location	Institution	Topic
1	Achmad Hilmi	Male	Jakarta	Rumah Kitab	RUU P-KS and Revised UUP
2	Ai Maryati	Female	Jakarta	KPAI	RUU P-KS
3	A	Others	Jakarta	YIM	RUU P-KS
4	Anggara Suwahyu	Male	Jakarta	Executive Director, ICJR 2017-2019	RUU P-KS and Revised UUP
5	Ansi Damaris	Female	NTT	LBH APIK NTT	RUU P-KS
6	Arif Maulana	Male	Jakarta	LBH Jakarta	RUU P-KS and Revised UUP
7	Ati Nurbaiti	Female	Jakarta	The Jakarta Post	RUU P-KS and Revised UUP
8	B	Female	Jakarta	Survivor, PLHIV/IPPI	RUU P-KS
9	Cania Citta	Female	Jakarta	Geolive	RUU P-KS and Revised UUP
10	D	Female	Jakarta	Indonesian Feminist	RUU P-KS and Revised UUP
11	Deltani Nuzuli Ramadhina	Female	Jakarta	PKBI	RUU P-KS and Revised UUP
12	Dian Indraswari	Female	Jakarta	Yayasan Pulih	RUU P-KS and Revised UUP
13	Dian Kartikasari	Female	Jakarta	Secretary General, KPI 2009-2019	RUU P-KS and Revised UUP
14	Elizabeth Kristi Poewardari	Female	Jakarta	Psychologist, Lecturer, Faculty of Psychology	RUU P-KS and Revised UUP
15	Euis Kurniasih	Female	Jakarta	Sunda Wiwitan	RUU P-KS and Revised UUP
16	Evy Affiati	Female	Jakarta	Ahmadiyah	RUU P-KS and Revised UUP
17	Fahri Salam	Male	Jakarta	Tirto.id	RUU P-KS and Revised UUP
18	Fen Budiman	Female	Jakarta	API KARTINI	RUU P-KS and Revised UUP
19	Feri Amsari	Male	Padang	PUSaKO FH Andalas	RUU P-KS and Revised UUP
20	Ghafur Dharmaputra	Male	Jakarta	Deputy for Coordination of the Protection of Women and Children, Coordinating MoHDC	RUU P-KS and Revised UUP
21	Giwo. S	Female	Jakarta	KOWANI	RUU P-KS and Revised UUP
22	H	Male	Yogyakarta	Islamic organization	RUU P-KS and Revised UUP
23	Hanifah Husein	Female	Jakarta	FORHATI	RUU P-KS
24	Hanita	Female	Jakarta	Consultant, Police PPA	RUU P-KS
25	Hannah Al Rasyid	Female	Jakarta	Actress	RUU P-KS
26	Harkristuti Harkrisnowo	Female	Jakarta	Faculty of Law, UI	RUU P-KS and Revised UUP
27	Hartoyo	Others	Jakarta	Suara Kita	RUU P-KS and Revised UUP
28	I	Female	Jakarta	Individual/Mother of a Survivor	RUU P-KS
29	Imam Nakhei	Male	Jakarta	KOMNAS Perempuan	RUU P-KS and Revised UUP
30	Is Werdaningsih	Female	Jakarta	Puanhayati MLKI	RUU P-KS and Revised UUP

No	Name	Gender	Location	Institution	Topic
31	Iyana Bagoes Oka	Female	Jakarta	Indonesian Solidarity Party	RUU P-KS and Revised UUP
32	Iyat Haryati	Female	Tangerang	KPI Tangerang	RUU P-KS and Revised UUP
33	J	Female	Jakarta	Sex worker survivor	RUU P-KS
34	Jufriansyah	Male	Banjarmasin	Yayasan Stabil	RUU P-KS and Revised UUP
35	Junito Drias	Male	Jakarta	Jaringan Aksi	RUU P-KS and Revised UUP
36	Justin Christina G.	Female	Jakarta	Kapal Perempuan	RUU P-KS and Revised UUP
37	K.H. Marzuki Wahid	Male	Cirebon	Lakpesdam NU	RUU P-KS and Revised UUP
38	Kalis Mardiasih	Female	Yogyakarta	Influencer	RUU P-KS and Revised UUP
39	K	Others	Jakarta	Sanggar Swara	RUU P-KS and Revised UUP
40	KA	Female	Jakarta	Person with disability	RUU P-KS
41	Khairani	Female	Aceh	Flower Aceh	RUU P-KS and Revised UUP
42	Kodar Tri Wusananingsih	Female	Jakarta	PEKKA	RUU P-KS and Revised UUP
43	Krismatuti	Female	Jakarta	Unit Head, PPA North Jakarta	RUU P-KS
44	Lenny Rosalin	Female	Jakarta	MoWECP Deputy for Child Growth and Development	Revised UUP
45	L	Female	Jakarta	OPSI	RUU P-KS and Revised UUP
46	Staf Pengajar FH UI	Female	Jakarta	Faculty of Law, UI	RUU P-KS and Revised UUP
47	Lina Yuliana	Female	Jakarta	East Jakarta PPA	RUU P-KS
48	Livia Iskandar	Female	Jakarta	LPSK	RUU P-KS
49	Luviana	Female	Jakarta	Konde.Co	RUU P-KS and Revised UUP
50	M. Adib Mahrus	Male	Jakarta	MoRA	Revised UUP
51	Maria I Tarigan	Female	Jakarta	MaPPI, Faculty of Law, UI	RUU P-KS and Revised UUP
52	Masruchah	Female	Jakarta	KUPI	RUU P-KS and Revised UUP
53	Melli Darsa	Female	Jakarta	Melli Darsa & Co	RUU P-KS and Revised UUP
54	Metta Suri Citradi	Female	Jakarta	Majelis Buddhayana Indonesia	RUU P-KS and Revised UUP
55	Musdah Mulia	Female	Jakarta	ICRP	RUU P-KS and Revised UUP
56	Muskatiani	Female	Jakarta	Ahmadiyah	RUU P-KS and Revised UUP
57	Mutiara Ika	Female	Jakarta	Perempuan Mahardika	RUU P-KS and Revised UUP
58	Natasya Kusumawardani	Female	Jakarta	Youthable	RUU P-KS and Revised UUP
59	Nila Wardani	Female	Malang	RUMPUN Malang	RUU P-KS and Revised UUP
60	Ninuk Widyantoro	Female	Jakarta	YKP	RUU P-KS and Revised UUP
61	Nur Rofiah	Female	Jakarta	Alimat	RUU P-KS and Revised UUP
62	Nursyahbani Katjasungkana	Female	Jawa Timur	LBH APIK Association Indonesia	RUU P-KS and Revised UUP
63	Nuryanti Dewi	Female	NTB	LBH APIK NTB	RUU P-KS and Revised UUP
64	Nuur Annisaa Yura	Female	Jakarta	Solidaritas Perempuan	RUU P-KS and Revised UUP
65	Pdt. Gomar Gultom	Male	Jakarta	Communion of Churches in Indonesia	RUU P-KS and Revised UUP

No	Name	Gender	Location	Institution	Topic
66	Petty S. Fatimah	Female	Jakarta	Femina	RUU P-KS and Revised UUP
67	Rahayu Saraswati	Female	Jakarta	Member of DPR 2014 – 2019	RUU P-KS and Revised UUP
68	R	Others	Jakarta	Trans man survivor	RUU P-KS
69	Ratnawati Lesawengen	Female	Jakarta	PERUATI	RUU P-KS and Revised UUP
70	Rege Novi K	Male	Jakarta	South Jakarta PPA	RUU P-KS
71	Reliana	Female	Jakarta	Unit Head, PPA West Jakarta	RUU P-KS
72	Rena Herdiyani	Female	Jakarta	Kalyanamitra	RUU P-KS and Revised UUP
73	R	Female	Jakarta	perEMPUan	RUU P-KS and Revised UUP
74	Riki Perdana Raya Waruwu	Male	Jakarta	Supreme Court	RUU P-KS and Revised UUP
75	Riri Khariroh	Female	Jakarta	Head of Consultation Institute for Women and Children's Empowerment and Protection (LKP3A) PP Fatayat NU	RUU P-KS and Revised UUP
76	Riska Carolina	Female	Jakarta	SGRC	RUU P-KS and Revised UUP
77	Rita Pranawati	Female	Jakarta	KPAI	Revised UUP
78	Rizqika Arrum Bakti	Female	Jakarta	Sandya Institute	RUU P-KS and Revised UUP
79	Rohika Kurniadisari	Female	Jakarta	Assistant Deputy for Fulfilment of Children's Right to Care, Family, and Environment, MoWECP	Revised UUP
80	Rosmeri	Female	Jakarta	Indonesian Buddhist Women	RUU P-KS and Revised UUP
81	Rosmiati	Female	Makassar	LBH APIK Makassar	RUU P-KS and Revised UUP
82	Safina Maulida	Female	Jakarta	Migrant Care	RUU P-KS and Revised UUP
83	Sandrayati Moniaga	Female	Jakarta	KOMNAS HAM	RUU P-KS and Revised UUP
84	Saraswati Dewi	Female	Jakarta	FIB UI	RUU P-KS and Revised UUP
85	Setnike	Female	Jakarta	PPA Polda	RUU P-KS
86	Siet Nie	Female	Jakarta	Indonesian Confucian Women	RUU P-KS and Revised UUP
87	Sjamsiah Achmad	Female	Jakarta	CEDAW Committee	RUU P-KS and Revised UUP
88	Slamet	Male	Jakarta	PPA Polda	RUU P-KS
89	Sonya Hellen Sinombor	Female	Jakarta	Kompas	RUU P-KS and Revised UUP
90	Sophia Hage	Female	Jakarta	Lentera Sintas Indonesia	RUU P-KS and Revised UUP
91	Sr. Natalia	Female	Jakarta	KWI	RUU P-KS and Revised UUP
92	Syaldi Sahude	Male	Jakarta	Aliansi Laki-laki Baru	RUU P-KS and Revised UUP
93	Sylvana Maria Apituley	Female	Jakarta	2nd Deputy, KSP	RUU P-KS
94	Teza Farida	Female	Jakarta	PKBI	RUU P-KS and Revised UUP

No	Name	Gender	Location	Institution	Topic
95	Thomas	Male	Jakarta	Assistant Deputy for Fulfilment of Children's Right to Care, Family, and Environment, MoWECP	Revised UUP
96	Tri Hastuti Nur Rochimah	Female	Yogyakarta	Aisyyah	RUU P-KS and Revised UUP
97	Tuani Sondang Rejeki M	Female	Jakarta	LBH APIK Jakarta	RUU P-KS and Revised UUP
98	Ummu Azizah Mukarnawati	Female	Jakarta	CSR, Semen Indonesia	RUU P-KS and Revised UUP
99	Vitria Lazzarini	Female	Jakarta	P2TP2A	RUU P-KS and Revised UUP
100	Vivi Restuviani	Female	Jakarta	Hollaback	RUU P-KS and Revised UUP
101	Wahyu Susilo	Male	Jakarta	Migrant Care	RUU P-KS and Revised UUP
102	W	Female	Jakarta	HWDI	RUU P-KS and Revised UUP
103	Wikanti Yogi	Female	Jakarta	Indonesia Dharma Hindu Women	RUU P-KS and Revised UUP
104	W	Others	Jakarta	MSM survivor	RUU P-KS
105	WB	Male	Jakarta	Confucian organization	RUU P-KS and Revised UUP
106	Wulansari	Female	Jakarta	P2TP2A (Law)	RUU P-KS and Revised UUP



NGO in Special Consultative Status
with the Economic and Social Council of the United Nations, Ref. No: D1035

Jl. Jatipadang Raya Kav.3 No.105 Pasar Minggu, Jakarta Selatan, 12540
021 7819734, 7819735 | info@infid.org | www.infid.org

Follow Us:

