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## Law Enforcement of the Crime of Child Intercourse through Marriage: A Review of Islamic Law and the SDGs (Decision No. 6/Pid.Sus/2022/PN. Mre)

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### Abstract

**Objective:** This study aims to critically analyze the inconsistency between Indonesia's national objectives, particularly the Sustainable Development Goals (SDGs), and the criminal law policies applied by the Public Prosecutor in cases involving sexual intercourse with minors resolved through marriage. Using Decision No. 6/Pid.Sus/2022/PN. Mre as a case study, the research seeks to formulate a model for legal reconstruction grounded in Islamic law and restorative justice that ensures optimal protection for child victims. **Theoretical framework:** The theoretical framework draws upon progressive legal theory, restorative justice theory, and child protection theory within the criminal justice system. These theories serve as a foundation for understanding the gaps between legal norms and their implementation, particularly in handling cases involving vulnerable victims like children. **Literature review:** The literature review explores the implementation of restorative justice in juvenile law, the prosecutorial role in minor-related offenses, and the policy discrepancies in protecting children's rights. Previous studies have often overlooked the intersection between cultural or religious practices and legal responses, especially in cases resolved through marriage rather than prosecution. **Methods:** Employing normative legal research methods, this study uses a legislative, conceptual, futuristic, and case approach to evaluate the legal basis and implications of resolving child sexual crimes through marriage. **Results:** The findings reveal that resolving such cases via marriage undermines the principles of child protection and justice. It neglects the child's rights as emphasized in Islamic law and contradicts global commitments under the SDGs, particularly Goal 16 (Peace, Justice, and Strong Institutions). The study proposes a legal reconstruction model that reinforces collaboration between law enforcement and prosecutors to uphold restorative justice while ensuring legal certainty and the best interests of the child. **Implications:** This research contributes novel insights into reforming Indonesia's criminal law policy concerning children, integrating Islamic legal principles with global human rights standards. **Novelty:** This study offers a legal reconstruction model of restorative justice child sexual intercourse cases, which balances legal certainty and the protection of children's rights in criminal justice proceedings.

**Keywords:** reconstruction, intercourse, child, marriage, islamic law, sdgs.

## INTRODUCTION

Sexual crimes against children remain a pressing legal and moral issue in Indonesia, often entangled with cultural and religious considerations. One controversial phenomenon is the resolution of child sexual intercourse cases through marriage between the perpetrator and the victim. This practice, though sometimes socially accepted, raises serious concerns regarding justice, child protection, and the long-term well-being of victims. It also contradicts Indonesia's commitment to the Sustainable Development Goals (SDGs), particularly Goal 5 (Gender Equality) and Goal 16 (Peace, Justice, and Strong Institutions), which emphasize the elimination of violence against children and the strengthening of legal institutions [1].

The issue becomes even more complex when examined through the lens of Islamic law, which emphasizes the protection of dignity (*ḥifz al-ʿird*), lineage (*ḥifz al-nasl*), and the rights of vulnerable groups, including children. While Islamic legal traditions prioritize the restoration of social harmony, they also strongly emphasize justice and protection for the oppressed. The tendency to resolve cases through marriage, rather than legal prosecution, often places victims at greater psychological and social risk and fails to deliver substantial justice [1].

This research focuses on the legal analysis and reconstruction of law enforcement mechanisms in cases where sexual intercourse with children is resolved through marriage, using District Court Decision No. 6/Pid.Sus/2022/PN. Mre as a primary reference. The aim is to examine the gaps between existing criminal justice policies and the broader goals of both Islamic legal ethics and the SDGs. It critically evaluates the role of the Public Prosecutor and the criminal justice system in either enabling or preventing such outcomes. The urgency of this research lies in the need for a restorative justice model that upholds both national and international legal standards, provides real protection to child victims, and aligns with the principles of Islamic law and the SDGs [2].

Children are explicitly and specifically stated in Article 28B paragraph (2) of the Constitution of the Republic of Indonesia of 1945 (hereinafter abbreviated as the Constitution. RI. In 1945) as one of the branches of the subject of law that are entitled to the guarantee of government protection from discriminatory acts or attempts in its survival, growth, and development. The government's special protection of children as stipulated in the constitution is also adopted in the integrated criminal justice system, both in the aspects of material criminal law and formal criminal law. The whole is designed differently by the lawmakers when compared to the legal subject of the person who is categorized as an adult or not in custody under applicable laws and regulations [3].

The criminal regime in the legal system in Indonesia against perpetrators of the crime of sexual intercourse against children, in its development tends to be oriented towards the purpose of retribution, this can be observed in the dynamics of the threat of imprisonment, criminal fines, and actions in Law Number 23 of 2002 concerning Child Protection as last amended by Law Number 17 of 2016 concerning the Stipulation of Government Regulations instead of Law Number 1 of 2016 on the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law as repealed by Law Number 1 of 2023 concerning the Criminal Code [3].

The legal fact of the high criminal threat and the actions that will be applied to the perpetrators of the crime of sexual intercourse against the child, are caused by 2 (two) considerations classified by the lawmakers in the considerations of related laws that children are the shoot, potential and the next generation of the ideals of the nation's struggle, have a strategic role and have special characteristics and characteristics that ensure the continuity of the existence of the nation and state in the future, and the increasing number of sexual violence against children from year to year and

threatening the strategic role of children as the future next generation of the nation and state. The surge was stimulated by the increase in the use of gadgets by children, the lack of parental supervision of children's activities, and economic problems [3].

In the dynamics of the development or renewal of the law in the national and international society, there is momentum even though the lawmakers express verbs containing the provisions of criminal threats and can be applied at a time to suspects of the crime of sexual intercourse with children, the criminal justice sub-system cannot immediately see the availability of these legal norms as an absolute applicable regulation. In the latest theory of legal objectives, Gustav Radbruch emphasized that the objectives of the law are legal justice, legal usefulness, and legal certainty that are operationalized based on the principle of priority and relative (depending on the case). Thus, in some criminal cases, sometimes case A is decided based on justice and legal certainty, while in case B where the type of criminal act is the same, it is decided based on the principles of justice and legal usefulness [4].

The phenomenon of relativity in the application of the principles of justice, usefulness, and legal certainty is influenced by several factors, including the level of reprehensibility of the act, the level of losses caused, the existence of out-of-court settlements, and the factors of effectiveness and efficiency in the implementation of the integrated criminal justice system based on the principles of criminal procedural law. The Public Prosecutor's policy approach in the case of the crime of sexual intercourse against a child committed by the convicted Alex Malawi aged 22 years to his 16-year-old PA lover as examined, tried, and decided in the Decision of the Muara Enim District Court Number 6/Pid.Sus/2022/PN. Mre sentenced to 6 (six) months in prison and a fine of Rp 1,000,000,- is considered to have deviated from the concept of priority principles initiated by Gustav Radbruch in elaborating justice, usefulness, and legal certainty [5].

The Public Prosecutor tends to seek justice for the victim's child by prioritizing legal certainty by still registering the case to the Muara Enim District Court, even though there has been a willingness on the part of the perpetrator and the victim to voluntarily make peace in a family and have held a valid marriage as stipulated in Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Amendments to the Law Number 1 of 1974, at the Muara Enim Police Station because the perpetrator is undergoing detention as stated in Article 21 of the Criminal Code [6].

Based on the Explanation of Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power Jo. General Explanation point 3 letter e of Law Number 8 of 1981 concerning the Criminal Procedure Law, the lawmakers emphasized that the implementation of the principles of simplicity, speed, and low cost in the examination and settlement of cases in court does not exclude precision and precision in seeking truth and justice. The provision implicitly stipulates that in the process of seeking truth and justice, the principles of simplicity, speed, and low cost can be violated or retained. However, in some situations and conditions in case of a certain position in a criminal case, the right of discretion possessed by the Attorney General is urgently needed to stop the prosecution of the suspect, considering that certain factors do not allow the Public Prosecutor to use the procedural justice approach, especially in the legal issues raised in this study [7].

One of the impacts of promiscuity among adolescents is out-of-wedlock pregnancies. Pregnancies before marriage are not only an individual problem, but also affect the social order, especially for the victim's family. Feelings of shame and social pressure often encourage parents to find solutions so that their children can be accepted back into society. One of the steps that is often taken is to marry a pregnant woman to a man who is considered responsible, whether or not she is pregnant. This

practice is known as marriage due to adultery, which in Islamic law and positive law have different legal and moral implications [8].

Thus, based on a background review that shows the development or needs for the law to accommodate legal problems in society, the author is interested in formulating the problems in this study by questioning how to reconstruct law enforcement in the settlement of the crime of sexual intercourse against children through marriage to realize justice, usefulness and legal certainty in the context of the reform of the juvenile criminal law in Indonesia after the marriage between the victim and the perpetrator is carried out which is certainly by the requirements regarding legal marriage according to Islam.

## LITERATURE REVIEW

The issue of child sexual abuse and its resolution through marriage has generated significant academic and legal discourse, especially in contexts where customary, religious, and legal systems intersect. In Indonesia and other Muslim-majority countries, the tension between statutory law and societal norms often leads to legal outcomes that diverge from international child protection standards. Several scholarly works have explored the inconsistencies within national criminal justice systems, particularly in handling cases involving minors and sexual violence [8].

One recurring theme in the literature is the inadequacy of punitive approaches to address the complex social and psychological consequences of child sexual abuse. While conventional criminal law focuses on retribution and deterrence, restorative justice offers an alternative model that centers on healing, accountability, and the best interest of the victim. Scholars have emphasized the need for a shift toward victim-oriented justice mechanisms, particularly when the victim is a minor. In such cases, legal outcomes must prioritize psychological recovery, social reintegration, and long-term well-being rather than social compromise or family pressure [8].

From an Islamic legal perspective, the literature highlights the *maqāṣid al-sharīʿah* (objectives of Islamic law), which include the protection of life, dignity, lineage, and intellect. These objectives underscore the incompatibility of resolving child sexual crimes through marriage, as such practices may violate fundamental rights and expose victims to prolonged harm. Islamic legal scholars have increasingly advocated for a contextual and principled application of Islamic teachings that align with universal human rights and child welfare principles. The literature also reflects growing concern about the role of legal actors—particularly prosecutors and judges—in either perpetuating or preventing child marriage as a resolution to criminal cases. The discretionary powers exercised by these actors can significantly influence whether justice is served or denied. Studies have shown that without strict legal frameworks and child-sensitive procedures, the legal system risks becoming complicit in further victimization [9].

Another emerging area of focus is the alignment of domestic legal practices with international frameworks, such as the Sustainable Development Goals (SDGs). Goal 16 calls for inclusive justice systems and the elimination of violence against children, while Goal 5 aims to eradicate harmful practices like child marriage. Yet, literature reveals a gap between Indonesia's SDGs commitments and the practical realities of law enforcement in cases like child sexual abuse resolved through marriage. Overall, existing literature calls for legal reform that integrates restorative justice principles, aligns with Islamic legal ethics, and fulfills global commitments under the SDGs. The need for a comprehensive, victim-focused approach remains urgent and central to ensuring justice and protection for children [10].

## METHODOLOGY

This study adopts a descriptive qualitative research method, which is appropriate for examining complex socio-legal issues involving the intersection of law, religion, and social justice. The main objective of descriptive qualitative research is to provide a systematic, factual, and accurate description of the characteristics of a particular phenomenon. In this context, the research seeks to understand how cases of child sexual intercourse resolved through marriage are handled within Indonesia's legal system, particularly from the perspectives of Islamic law and the Sustainable Development Goals (SDGs) [10].

As a type of library research, data collection is conducted through documentary techniques. This involves gathering and analyzing secondary data from a wide range of sources, including court decisions, legal texts, scholarly articles, books, journals, policy papers, and other written materials relevant to the research topic. Specifically, Decision No. 6/Pid.Sus/2022/PN. Mre serves as a primary case study, while comparative references are drawn from Islamic jurisprudence and international legal standards related to children's rights and justice [11].

The data analysis process follows the qualitative method developed by Huberman and Miles, which includes four key steps:

1. Data Reduction – In this stage, the researcher selects, simplifies, and focuses on data that are most relevant to the research questions and objectives. Irrelevant or redundant information is eliminated to concentrate on patterns related to law enforcement, child protection, and restorative justice.
2. Data Display – The selected data are then organized systematically in the form of tables, descriptions, or conceptual maps to facilitate understanding and interpretation. This step helps in identifying relationships between Islamic law principles, statutory law, and SDGs compliance.
3. Conclusion Drawing – Based on the patterns and themes that emerge during the data display, conclusions are drawn regarding the alignment—or misalignment—between legal practices and the principles of justice and child protection.
4. Verification – The final step involves reviewing and validating the conclusions against the existing literature and theoretical frameworks to ensure accuracy, consistency, and reliability.

This methodological approach allows for a comprehensive and critical analysis of the socio-legal implications of resolving sexual crimes against minors through marriage and offers insights into potential legal reforms that prioritize justice, child rights, and sustainable development [11].

**Table 1. Research Methodology**

Component	Description
Research Type	Descriptive qualitative research
Purpose	To explore how child sexual intercourse cases resolved through marriage are handled in Indonesia's legal system, from Islamic law and SDGs perspectives.
Research Approach	Library research (document-based study)
Data Sources	Secondary sources: court decisions (esp. Decision No. 6/Pid.Sus/2022/PN. Mre), legal texts, books, journals, Islamic jurisprudence, and SDGs-related literature.
Data Collection	Documentary techniques: archival and literature studies
Data Analysis Model	Huberman and Miles (Qualitative Analysis)



Step 1: Data Reduction	Focused selection and simplification of relevant data; eliminating redundant information to identify legal, Islamic, and SDG-related patterns.
Step 2: Data Display	Organizing data into conceptual maps, tables, and narratives to explore links between law, Islamic ethics, and sustainable development.
Step 3: Conclusion Drawing	Interpreting themes to assess alignment or gaps in legal practices regarding justice, child protection, and SDG obligations.
Step 4: Verification	Comparing findings with theoretical frameworks and literature to confirm validity and reliability.
Analytical Focus	Legal reform, restorative justice, child rights, Islamic legal principles, and SDG integration in criminal justice

## RESULTS AND DISCUSSION

### Legal Reconstruction of The Settlement of The Crime of Sexual Intercourse Against Girls Through Marriage in Realizing Legal Certainty, Justice, And Usefulness in The Reform of The Juvenile Criminal Law

Indonesia is a country that originates from the plurality of religions, beliefs, and diversity of customary law communities which are recognized expressistically verbally in Article 18B paragraph (2) Jo. Article 29 paragraph (2) of the Constitution. RI. In 1945. One of the peculiarities or patterns of customary law is that it prioritizes the existence of deliberation and consensus in every decision-making to resolve a dispute within the scope of customary law communities in harmony and peace. The legal consequence of the recognition in the constitution as the highest hierarchy of laws and regulations in the legal system in Indonesia results in all derivative regulations being obliged to adopt the values that have been constructed in the constitution, both at the legislative, executive, and judicial levels. In the context of the integrated criminal justice system, the value of pluralism is one of the manifestations of the lawmakers through the availability of restorative justice mechanisms in the organic laws of the Police, the Prosecutor's Office, and the Supreme Court, which in turn will be concretized through the internal regulations of the upcoming criminal justice sub-system [12].

According to Satjipto Rahardjo in the concept of progressive legal theory, there are 9 (nine) points of thought about the purpose of law enforcement in a country, which are as follows:

1. Law annulled the tradition of *analytical jurisprudence* or *rechtdogmatiek* and various types of understanding with the school of legal realism, *freirechtslehre*, sociological jurisprudence, intercession jurisprudence in Germany, natural law theory and *critical legal studies*;
2. The law annuls the argument that order only works through state institutions;
3. The goal of progressive law is to protect the people towards the ideal of the law;
4. The law annuls the status quo and does not want to place the law as an unconscionced technology, but a moral institution;
5. Law is a representation of an institution that aims to lead human beings to a just, prosperous life and make human beings happy;
6. Progressive law is a law that is oriented toward the interests of society and justice;
7. The formation of laws is solely aimed at humans, not the other way around. Thus, when there is a gap between concrete facts and legal norms, what is tested is the legal norm, because the law is considered not to reach part of the legal needs of the community;
8. Law does not act as an absolute and final institution, but has a dependency on how humans see and apply it;

9. Law as a process, law in the making [\[13\]](#).

The orientation of the restorative justice approach is in line with one of the policies launched by the administration of President Joko Widodo to improve the criminal and civil law system in Indonesia through the enactment of Presidential Regulation Number 18 of 2020 concerning the National Medium-Term Development Plan 2020-2024 (hereinafter abbreviated as Presidential Regulation Number 18 of 2020). Following the provisions of Article 2 paragraph (3) letter a Jo. Article 3 paragraph (1) of Presidential Regulation Number 18 of 2020, all the substance of the RPJMN functions as a guideline for Ministries/Institutions in preparing internal Strategic Plans of Ministries/Institutions. Juridically, the ideal concept in the enforcement of the law of juvenile crimes has been formulated by the lawmakers through the principles of the implementation of the juvenile criminal justice system as stipulated in Article 2 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, including [\[14\]](#):

- a. Protection;
- b. Justice;
- c. Non-discrimination;
- d. The best interests of the child;
- e. Respect for children's opinions;
- f. Child survival and growth and development;
- g. Child development and guidance;
- h. Proportional;
- i. Deprivation of independence and criminalization as a last resort; and
- j. Avoidance of retaliation.

However, the availability of these principles has not been actively accommodated by the Investigator and the Public Prosecutor in the Alex Malawi case as a benchmark or guideline in determining the feasibility of a criminal case for law enforcement efforts, including the principle of the best interests for children that tends to be ignored by the Public Prosecutor. The Public Prosecutor seems to feel afraid and difficult to explore and understand the values contained in Article 2 of Law Number 11 of 2012 concerning the Child Criminal Justice System. This phenomenon is due to the characteristics of the positivism paradigm inherent in Investigators and Public Prosecutors, such as bureaucratic, centralistic, hierarchical accountability, and command and normative system culture. The characteristics of such a work system have the potential to hinder Investigators and Public Prosecutors from pouring creativity or innovation into taking criminal law enforcement policies that require progressive legal breakthroughs that state that the law is for human beings and not human beings for the law [\[15\]](#).

The efficiency of judicial resources is also one of the objects affected if the Public Prosecutor can optimize the principles of the implementation of the juvenile criminal justice system. Based on the 2023 Annual Report of the Supreme Court of the Republic of Indonesia, the remaining ordinary criminal cases in 2022 at the district court level are 21,139 cases, while the number of ordinary criminal cases entered in 2023 is 117,773 cases, so the total case burden is 138,912 and has been decided as many as 117,013 and 21,899 cases must be decided in 2024. Specifically for children's cases, the remaining child criminal cases in 2022 are 876 cases, while the number of cases entered in 2023 is 5,188 cases, so the total caseload is 6,064 and has been decided as many as 5,148 and 916 cases must be decided in 2024 [\[16\]](#).

The political nature of criminal law is adaptive. Adaptive in the sense will depend a lot on the goals of the country concerned. Therefore, the legal politics of a country will tend to

be different from the legal politics of other countries. This is due to differences in historical, geographical, and socio-cultural backgrounds, political and economic systems, ideologies, and state goals. The politics of criminal law in the context of law enforcement of child crimes in Indonesia that are resolved through marriage need to be understood through 3 (three) main pillars, namely justice, legal certainty, and utility. These three pillars must be applied in a balanced or proportionate manner to achieve fair and humane legal goals in the juvenile criminal justice system in the future. Law enforcement must consider aspects of restorative justice that focus on recovering losses suffered by victims and rehabilitation for the perpetrators of criminal acts unless in certain circumstances there is an element of coercion or the absence of the victim's consent, then the crime must be applied to provide a deterrent effect and maintain public order and security [17].

According to Wemmers, a restorative justice approach that prioritizes reconciliation between perpetrators and victims in cases of sexual violence may make victims feel more mentally burdened to forgive the perpetrator. Female victims can be "involved in a process that seems to prioritize help for male perpetrators," which means that this approach can strengthen the relationship of power and control. That ICJR studies show that the goal of restorative justice is restoration, not retribution. That the complainant/victim and the reported person/perpetrator should receive recovery. The victim did not obtain the goal of recovery through restorative justice in a quo case. The victim experiences new psychological problems as a result of the marriage that took place and then did not produce a healthy household. Therefore, the purpose of restorative justice has been violated when restorative justice is used to resolve criminal cases in a quo case [18].

The concept of suffering can be observed by referring to the formulation of Article 1 number 3 of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, that the victim is a person who experiences physical, mental and/or economic suffering caused by a criminal act. Strictly speaking, the Public Prosecutor must be able to ensure that the policy options applied can meet part or all of the types of suffering of victims of criminal acts, including the perpetrators by placing *penal orientation* as the last option. Alternative settlements through marriage must also be ensured to be carried out by free agreement without any pressure on the victim's child, considering that potential stress results in several types of mental disorders in the victim's child, such as anxiety disorder, depression, bipolar disorder, post-traumatic stress disorder (PTSD), schizophrenia, eating disorders, disruptive behaviors, dissociative disorders, and neurodevelopmental disorders [19].

Rape or sexual intercourse is still a criminal act that must be resolved by criminal law. This does not mean that the perpetrators who are married to the victim will be acquitted as a result, as is the case when the perpetrators have agreed to peace by marrying one of the perpetrators to the victim so that the other perpetrators can be free just like that or in other words transfer responsibility for their actions to one perpetrator only [20]. To illustrate, in criminal law enforcement, the state takes full action against the perpetrators through its law enforcement agencies, which are often involved with various interests and without feeling the need to involve the victim, except in the case of complaints against law enforcement decisions [21].

According to Barda Nawawi Arief, the current positive criminal law emphasizes the protection of victims indirectly rather than directly. This is because, according to positive criminal law, positive criminal acts are not considered a violation of the legal interests of a person, namely the victim, directly, but only as a violation of norms or legal regulations in the abstract. As a result, accountability for the victim's loss or suffering is more focused on personal responsibility [22].

The innovation of renewing the settlement of sexual intercourse crimes against children is a policy that risks becoming a negative precedent or a loophole in the legal industry, such as marriage will be used as an effort to avoid criminal liability for perpetrators, normalize



harassment and even abuse of authority by law enforcement officials. Therefore, in determining the implementation of marriage between the perpetrator and the victim, the victim of the crime must first take the legal route by making a police report that there has been an alleged criminal act of sexual intercourse with a child, which means that the victim must first enter the criminal justice system [23].

Despite the applicability of customary law in communities such as Simbur Cahaya in South Sumatra, Megou Pak Tulang Bawang customary law in Lampung, and Malaweng customary law in South Sulawesi in a customary law society where 3 (three) types of customary law examples apply to marriage sanctions for perpetrators of sexual intercourse against the victim's child and adult victim, legal certainty must remain a priority considering that Indonesia is a country of law. However, law enforcement must not forget the benefits of the law if the perpetrator is still brought to court. Thus, the criminal justice system in Indonesia is not only seen by the public as a system that prioritizes law enforcement but also a system that prioritizes the collaboration of *procedural justice*, *substantive justice*, and *utilitarian justice* in criminal law enforcement [24].

Islamic criminal law recognizes the law of qisās-diyat, which means that the perpetrator will be punished according to his deeds (qisās), according to the victim's sense of justice, but the act of forgiveness and peace of the victim and his family is considered preferable [25]. The perpetrator can also be sentenced to diyat, which means they must compensate for a certain amount of property owned by the victim and his family so that there is no more grudge between the two. Based on the perspective of Islamic law, marriage between the perpetrator and the victim is one of the damages in a quo case [26]. Thus, the retraction of the report is comparable to apologizing to the victim, so they are not punished for their apology. However, Imam Abu Yusuf from Abu Hanifah stated that marriage performed after adultery is a syubhat that can refuse the imposition of the limit [27]. Meanwhile, the jumhur fuqaha still views it as pure adultery that must be sanctioned by had, even if it is followed by marriage. Marriage cannot protect against sexual offenses. For those who are married, the punishment of stoning, and for those who are not, abuse and exile [28].

In addition, there are the following reasons that can make the limit of adultery removed by the existence of peace using marriage [29]. 1. Because the perpetrator revoked his confession in a case where the confession of adultery has been proven; 2. Because the witnesses retracted their testimony before the punishment was carried out; 3. Because of the confession of adultery by one of the perpetrators of adultery or denial if both of them admit to adultery; 4. Due to the incapacity of the witnesses before and after the judge's decision; 5. Because the witness died before the stoning penalty was applied; 6. Marriage is performed between people who commit adultery, but some scholars argue that marriage after the act of adultery does not abort the punishment of had [30].

This mechanism also answers the mistakes in people's habits in understanding the concept of out-of-court settlement that has been carried out without involving the role of law enforcement officials to ensure that the process of resolving a legal problem is carried out objectively based on the law. This effort minimizes the injury to the rights and obligations of victims and perpetrators of criminal acts to be involved in the settlement of criminal acts experienced and committed [31]. However, the support of communities such as victims' families, social workers (Peksos), Correctional Centers (Bapas), and the Indonesian Child Protection Commission (KPAI) in the law enforcement process is very much needed to create an atmosphere that fosters confidence in children who are victims of sexual intercourse against children. The implementation of this study, law enforcement that only prioritizes justice and legal certainty but overrides the usefulness of the law causes other domino effects in law enforcement such as *the overcapacity* of Correctional Institutions (Lapas) and conveying the responsibility of perpetrators in the future to the victim to provide for their natural and mental sustenance [32].

## Islamic Views on Solving the Crime of Sexual Intercourse Against Girls Through Marriage

The association among teenagers and young people today can be said to be very worrying. Not a few of them are trapped in promiscuity due to the misuse of technological facilities such as the Internet; So it is not surprising that there are many phenomena of pregnant women out of wedlock, the sophistication of technology greatly supports the existence of promiscuity that is increasingly open, so it is not surprising that there are pregnancies outside of marriage, and it is found that parents come to the Religious Court to apply for a marriage dispensation for adolescents because they must get married as soon as possible for the status of children who are in the womb as a result of the act of adultery (premarital pregnancy) [33].

### The Law of Marrying a Pregnant Woman for Adultery

Scholars differ on marrying an adulterous woman or daughter. This difference is due to the difference in views on the understanding of the sentence prohibiting marrying an adulterous woman, as mentioned in Q.S. An-Nur [34]:

Most scholars seem to be inclined to interpret it as a sin, not haram, so they allow it to marry her.

Imam Ash-Shafi'i allowed the marriage contract with her even though she was pregnant because there was no haram on the grounds of this haram. The scholars agree that a man who is an adulterer is lawful to marry an adulterous woman [35]. Thus, the marriage of a man to a woman who is pregnant by himself is valid. They are allowed to have intercourse as husband and wife should because it does not contradict the sound of Surah al-Nur verse 3.

In general, the views of fiqh scholars regarding the marriage of pregnant women due to adultery can be divided into two:

- 1). Clerics who forbid the marriage of pregnant women for adultery
- 2). Scholars who allow marriage to get pregnant because of adultery [36].

In more detail, their opinions can be grouped into six:

- 1). According to Abu Hanifah, based on the narration of Hasan, reported that he allowed the marriage of a pregnant woman in adultery, but was not allowed to sleep with her husband before the child she conceived was born, because there was no textual provision of sharia that prohibited the marriage of a pregnant woman for adultery [37].
- 2). Abu Yusuf and Zukar argue that the marriage of a pregnant woman due to adultery should not be like the impossibility of marriage to A pregnant woman other than adultery (such as being left dead by her husband in a pregnant state), because it is not possible to sleep together, then it is not permissible to carry out marriage [38].
- 3). The Malikiyah scholars do not allow the marriage of a pregnant woman who is adulterous absolutely before the person concerned is completely free from pregnancy (istibra') as evidenced by three menstruation for three months. If the woman marries before istibra', the marriage is fasid (annulled by itself), because of the fear of mixing offspring in the womb and the Prophet (peace and blessings of Allaah be upon him) forbade us to water other people's plants [39].
- 4). Shafi'iyah scholars think that a woman who is pregnant with adultery can be married because her pregnancy cannot be attributed to anyone (except to her mother), the existence of pregnancy is seen as the same as the absence of pregnancy. Imam al-Nawawi explained that a woman who becomes pregnant due to adultery is not obligated to perform iddah (waiting time)., Scholars have agreed that marriage during iddah is

forbidden in Islam based on the word of Allah: "And do not perform aqad nikah until the time set by al-Kitab (the time of iddah)" (QS. Al-Baqarah (2): 235 The reason is that pregnant women who commit adultery are not among those who are prohibited from marrying, as stated in the Qur'an. An-Nisa (4:21) "How will you take it back, when some of you have mingled with others as husband and wife? And they (your wives) have taken from you a strong covenant" [40].

- 5). Hanabilah scholars stipulate two conditions regarding the ability to marry a woman who is pregnant due to adultery. According to Ulama Hanabilah, a man who knows that a woman has committed adultery, is not permissible to marry her except under two conditions:

Ibn Hazm argued that a woman who became pregnant due to adultery could be married or married even though she had not yet given birth to a child. Ibn Hazm explained that pregnant women who should not be married are pregnant women who are divorced or left dead by their husbands. Pregnant women, apart from the result of a legal relationship, may be married because the person concerned is not in the marital bond and is not in the waiting period [41].

**Table 2. Summary of Legal Reconstruction and Islamic Law Perspectives on Child Sexual Intercourse Resolved Through Marriage in the Context of SDGs**

Aspect	Key Points
Legal Foundation	Indonesian Constitution (Article 18B(2), Article 29(2)) recognizes pluralism, customary law, and religious diversity; restorative justice supported through national legal reforms.
Theoretical Framework	Progressive Legal Theory (Satjipto Rahardjo): Law as moral institution, focused on human interest, justice, and societal well-being.
Restorative Justice & SDGs	Aligned with SDGs Goal 16 (Justice & Institutions) and Goal 5 (Gender Equality); emphasizes healing, not retaliation. Presidential Regulation No. 18/2020 supports this.
Juvenile Justice Principles	Law No. 11/2012 outlines 10 principles: protection, non-discrimination, best interest of the child, etc.—often ignored in prosecution practices.
Case Study Findings	In Decision No. 6/Pid.Sus/2022/PN. Mre, the marriage was used to resolve child intercourse crime; prosecutors failed to apply child-friendly justice principles.
Islamic Law View	Majority of Islamic scholars disallow marriage as protection for sexual crimes; Jumhur Fuqaha: marriage cannot nullify zina (adultery) penalties.
Risks of Legal Loopholes	Marriage used to avoid criminal responsibility; victim suffers new trauma; undermines legal certainty and justice.
Judicial System Impact	Overburdened courts: more than 6,000 child cases in 2023; restorative justice could reduce case load if properly applied.
Policy Critique	Prosecutors show positivist paradigm (rigid, hierarchical), resisting creative application of progressive or restorative legal measures.
Islamic Compensation Concepts	Qisas-Diyat system allows for peace and compensation, but not as a substitute for justice; forgiveness is encouraged, not imposed.
Customary Law & Limitations	Customary laws (e.g., Simbur Cahaya, Malaweng) may allow marriage as resolution, but must be subordinate to national legal norms and SDG principles.
Victim Rights & Mental Health	Forced marriage post-abuse causes psychological harm (e.g., PTSD, depression); violates restorative aims; marriage cannot replace accountability.

## Legal Analysis

The legal settlement of child sexual intercourse cases through marriage raises profound concerns regarding the enforcement of justice and child protection, especially when measured against both Islamic legal norms and international commitments such as the

Sustainable Development Goals (SDGs). In the case of Decision No. 6/Pid.Sus/2022/PN. Mre, the perpetrator's marriage to the minor victim was used as grounds for leniency, despite the clear mandate of Law No. 35 of 2014 on Child Protection and the Juvenile Justice System Law No. 11 of 2012, which require strict protection of minors and the prioritization of their best interests.

From an Islamic legal perspective, marriage cannot serve as a shield against the legal consequences of zina (unlawful sexual intercourse), especially when it involves coercion or exploitation. While Islamic teachings allow for *qishāṣ* and *diyāt* in resolving some criminal offenses, the notion of forced marriage as restitution contradicts the objectives (*maqāṣid*) of Islamic law—particularly the protection of dignity (*ḥifẓ al-‘ird*), lineage (*ḥifẓ al-nasl*), and the rights of children. The dominant view among *fuqahā’* (jurists) rejects post-intercourse marriage as a valid justification to avoid *ḥadd* (punishment), highlighting that such acts remain criminally prosecutable.

In the context of SDGs, this practice violates Goal 5 (achieve gender equality and end all forms of violence against women and girls) and Goal 16 (promote peace, justice, and strong institutions). Allowing marriage to override accountability undermines the integrity of legal institutions and fails to prevent re-victimization, thus widening the justice gap for children. The analysis of the legal reasoning in this case reveals a positivistic and procedural approach that neglects restorative and transformative justice values. The prosecutor's reliance on marriage as a resolution tool demonstrates institutional hesitation in applying child-centered legal principles. Moreover, it raises the risk of setting a dangerous precedent, where marriage becomes a legal escape for perpetrators and a forced compromise for victims.

To align with both Islamic ethical frameworks and the SDGs, legal reform must include strict guidelines ensuring that marriage is never used to nullify criminal responsibility. Instead, mechanisms for rehabilitation, restitution, and genuine restorative justice—supervised by independent bodies such as the Witness and Victim Protection Agency (LPSK)—should be prioritized. These frameworks should ensure that victims receive psychological, legal, and social support, while also holding perpetrators accountable. In conclusion, the resolution of sexual crimes against children must never compromise justice, regardless of social or customary pressures. Upholding Islamic values and the SDGs demands a legal system that protects, not pardons, in the name of peace.

## CONCLUSION

The reconstruction of legal policy regarding the settlement of sexual intercourse crimes against children through marriage requires a careful balance between legal certainty, justice, and social usefulness. From the perspective of Islamic law, such a resolution may be conditionally permissible, especially when it involves reconciliation, dignity restoration, and the best interest of the victim. However, Islamic legal scholars differ on the permissibility of marriage during pregnancy, with many emphasizing the importance of avoiding harm and safeguarding lineage. Thus, while Islamic law provides space for restorative outcomes, it does not advocate impunity or undermine the seriousness of sexual offenses. In the Indonesian legal context, marriage is sometimes used as a mechanism to resolve sexual crimes involving minors, as allowed under Law Number 1 of 1974 concerning Marriage. However, this resolution contradicts the spirit of the Child Protection Law, which mandates minimum imprisonment for perpetrators. Sentencing perpetrators while simultaneously legitimizing their marriage to victims creates legal inconsistency and fails to fulfill restorative justice principles. It also violates core tenets of the Sustainable Development Goals (SDGs)—particularly Goal 5 (achieve gender equality and empower all women and girls) and Goal 16 (promote peaceful and inclusive societies, access to justice, and strong institutions). Therefore, this research suggests a restructured legal approach: law enforcement may stop investigations or prosecutions in such cases only under strict conditions. These include: the marriage must occur based on mutual consent of

the victim (or family) and the perpetrator (or family); the involvement of customary law communities, social workers, and correctional centers must act as a multi-layered filter to prevent coercion and ensure the child's best interest; and there must be clear rehabilitation efforts for both the victim and perpetrator. These processes must aim at restoring dignity, correcting behavior, and preventing re-offense. An independent institution such as the Witness and Victim Protection Agency (LPSK) must supervise and evaluate such decisions to ensure transparency, fairness, and compliance with national and international standards. LPSK's involvement would help institutionalize oversight and contribute to the sustainability of restorative mechanisms that align with human rights and SDGs mandates. Ultimately, law enforcement must prioritize child protection by adopting restorative justice models that are grounded in Islamic ethical values, respect for victims' dignity, and global human rights frameworks. Marriage must not be used as a legal loophole but instead carefully evaluated as part of a structured, supervised, and child-centered justice process.

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### Author Contribution

All authors contributed equally to the conception, analysis, and writing of this research. Heru Pujo Handoko led the legal analysis and interpretation. Topo Santoso contributed to the Islamic law and SDGs framework. Nashriana handled the case study review and data validation. All authors reviewed and approved the final manuscript.

### Conflicts of Interest

All authors declare no conflict of interest.

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