

Forced Marriage as Sexual Violence: An Analytical Study under Indonesian Law and the Shafi'i School of Thought

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ABSTRACT

Background: Family decisions that exceed their rightful authority can lead to forced marriage. Law No. 12 of 2022 significantly amends the legal framework by recognising forced marriage as a form of sexual violence, characterising it as coercion and a violation of individual consent. In contrast, the Indonesian Marriage Law and the Compilation of Islamic Law require both the guardian's obligation and the bride's consent for a valid marriage. **Objective:** This study analyses forced marriage as a criminal offence of sexual violence under Law No. 12 of 2022 and within the Shafi'i school of jurisprudence. **Methodology:** The research employs normative legal methodology, as well as doctrinal, conceptual, and comparative legal approaches, to examine various legal sources. **Results:** The Islamic principle of *ijbar*, which allows a guardian to arrange a marriage for a dependent, has sometimes been misused to justify coercive unions on religious grounds. **Conclusion:** Indonesian law classifies forced marriage as sexual violence, while Shafi'i jurisprudence regulates *ijbar* with strict and specific conditions. The findings suggest that increasing public awareness and harmonising religious and state legal frameworks are essential to prevent forced marriages and protect the rights of women and children.

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1. Introduction

Sexual violence remains inadequately addressed in Indonesia. Cases of sexual harassment continue due to weak legal protection for victims. For years, laws handling sexual violence have allowed interpretations that harm victims. The lack of clear regulations has spurred public pressure on the government to enact specific legislation. As a result, in 2022, Law Number 12 concerning Criminal Acts of Sexual Violence became the legal basis for handling cases [1].

Statistical data from Indonesia shows a distressing trend, highlighting the urgent need to strengthen legislation against sexual violence. The National Commission on Violence Against Women

(Komnas Perempuan) reports that in 2021, there were 338,496 cases of gender-based sexual violence against women, a 50% increase from 2020. This rise highlights the escalating threat and the need for prompt legal action [2]. The Women and Children Protection Unit (PPA Unit) of the Criminal Investigation Unit (Satreskrim) of the Malang City Police (Polresta Malang Kota) reported 64 regional cases between January and September 2022. Recent studies show that, over the past five years, most victims have been under 18, suggesting a systemic problem of child sexual exploitation [3].

The pandemic worsened the situation, especially regarding child marriage and marriage dispensations. The Religious Court Agency (BADILAG) reported a 300% rise in marriage dispensation requests in 2020. The numbers jumped from 25,280 in 2019 to 65,301 in 2020 [4]. Forced marriage is a significant concern, affecting women and girls more than men and boys [5]. The Ministry of Women's Empowerment and Child Protection (PPPA) sees the new law criminalizing forced marriage as an important step in improving Indonesia's legal system [6].

For over a decade, many have called for a legal mechanism to address sexual violence. This goal was achieved after events that began on May 9, 2022. The resulting law creates a framework to ensure justice, protection, and accountability for those subjected to sexual violence [7]. The law recognizes various forms of sexual violence, including harassment, exploitation, coerced abortion or contraception, rape, forced prostitution, sexual slavery, and sexual torture. Forced marriage is an important addition. This term refers to cases where someone is made to marry another without full and informed consent, usually through coercion or abuse of authority [8]. Law No. 12 of 2022, Article 4, paragraph 1(e), clearly criminalizes forced marriage. The framework mandates sanctions for anyone, directly or through intermediaries, who coerces another into marriage without just cause, especially when one party is dependent or under the other's control [9].

Forced marriages are common in Indonesia. In 2022, there was a significant forced marriage case involving a student who became pregnant by a religious leader's son (kiai). In some ethnic groups, forced marriage is deeply rooted in local culture [10]. In East Nusa Tenggara, the kawin tangkap practice involves abducting women for marriage, often without their consent [11].

Forced marriage is closely linked to child marriage. Financial hardship, respect for traditions, or concerns about family honor often cause parental pressure in these unions [12]. Data from the Central Statistics Agency show child marriage rates declined from 10.35% in 2020 to 9.23% in 2021. However, the numbers remain troubling. Law Number 12 of 2022 allows forced marriage when minors are involved, including unborn children. This clause diverges from the legal framework, as the Marriage Law requires both men and women to be at least 19 years old to marry. Law Number 12 of 2022 thus broadens protections for minors and highlights inconsistencies in Indonesia's legal system regarding the age of consent and marriage eligibility [13].

Furthermore, families often force members to marry against their will and make choices based on the preferences of the victim's close relatives. Under Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law, a marriage is valid only if both the guardian and the bride consent. When viewed alongside contemporary issues and changing social norms, these legal rules raise important questions [14]. Accordingly, this study analyzes the legal aspects of forced marriage as a type of sexual violence under Law No. 12 of 2022, and examines it from the viewpoint of Shafi'i-based Islamic jurisprudence.

The objectives of this study stem from the research problems previously stated. This study examines the legal implications and consequences of forced marriage, as described in Law Number 12 of 2022 on the Crime of Sexual Violence, to enable a clear analysis. It explores forced marriage as a form of sexual assault from the perspective of Shafi'i-based fiqh, emphasizing the Shafi'i school of thought. The study also compares the legal understanding of forced marriage in Law Number 12 of 2022 with its interpretation in Shafi'i jurisprudence, focusing on similarities and differences.

In the preceding section, studies on the subject were examined. This provides a comparative framework that shows both similarities and differences between the present study and earlier works. The text serves as a foundational reference to help the author implement their analytical method.

The initial pertinent study was by Rijal Abdul Aziz in 2022, entitled "An Analysis of Forced Marriage as a Criminal Act in Light of Maqasid al-Shari'ah in the Draft Law on the Elimination of Sexual Violence," conducted at Sunan Kalijaga State Islamic University, Yogyakarta [15]. The present study used a qualitative library research methodology with a normative legal framework, incorporating both primary and secondary legal sources. Data were examined using content analysis to interpret relevant written communications. A close examination of Aziz's study and this research reveals similar approaches: both investigate forced marriage in the context of laws that prohibit sexual violence. However, Aziz's study focused on the draft law and Maqasid al-Shari'ah, while this research examines the enacted Law No. 12 of 2022 and uses a Shafi'i jurisprudential perspective.

In 2020, Dayu Dyana Zahur conducted a second study, titled "Parental Coercion in Marriage According to Indonesian Legislation," at Syarif Hidayatullah State Islamic University Jakarta [16]. The present study used a library research method, drawing from a conceptual framework and legal documents at three levels: primary, secondary, and tertiary. Data analysis included editing, classifying, checking, interpreting, and drawing conclusions. This study connects Zahur's research to its own, as both focus on forced marriage law in Indonesia. The publications differ in subject matter and scope. Zahur examines parental coercion in marriage; this study explores forced marriage as sexual violence from legal and Islamic viewpoints.

The third study, "The Criminal Act of Sexual Violence on Forced Marriage: A Feminist Legal Theory Perspective," was conducted by Mu'ammarr Wafiuddin in 2022 at the State Islamic Institute of Ponorogo. The present study employed qualitative library research through conceptual and statutory methodologies, collecting data via observation, interviews, and documentation [17]. The data were then subjected to a descriptive analysis via qualitative interpretation. The primary similarity with the current study is its emphasis on forced marriage as an aspect of sexual violence. Wafiuddin's research employed feminist legal theory as its analytical framework, while the present study explores the same issue through the lenses of Law No. 12 of 2022 and Shafi'i-based fiqh.

2. Method

This study employs a normative juridical legal research method with doctrinal, conceptual, and comparative legal approaches. The normative juridical method is used because this research examines legal norms, doctrines, and concepts contained in statutory law and Islamic jurisprudence [18]. The doctrinal approach is applied to analyze the provisions of Law Number 12 of 2022 on the Crime of Sexual Violence, particularly its classification of forced marriage as a form of sexual violence. The conceptual approach is used to examine key concepts such as consent, coercion, guardianship, victim protection, and *ijbar*. The comparative approach is used to assess the relationship between Indonesian positive law and Shafi'i-based fiqh in regulating forced marriage.

The legal materials consist of primary and secondary sources. The primary legal material is Law Number 12 of 2022, supported by the Compilation of Islamic Law as the Indonesian Islamic legal context for marriage regulation; this statute enables the government to investigate forced marriage as a criminal act. Secondary materials include authoritative legal textbooks, academic journal articles, scholarly commentaries, and fiqh literature relevant to Shafi'i-based doctrines on marriage, consent, guardianship, and coercion including *Fiqh al-Islami wa Adillatuhu*. These materials are collected through documentary and library research and selected purposively based on their relevance to forced marriage, sexual violence, and Islamic legal reasoning.

The collection of legal materials is primarily facilitated by documentary research, a process that often involves extensive library research. This entails examining books, legal documents, academic articles, reports, and other pertinent written resources available in libraries or digital repositories [19]. This strategy is imperative for attaining a comprehensive understanding of the normative and theological underpinnings of forced marriage, sexual violence, and Islamic legal perspectives.

The analysis is conducted in five stages. First, the study identifies the legal norms in Law Number 12 of 2022 concerning forced marriage, including coercion, absence of consent, victim vulnerability, and legal protection. Second, the relevant statutory provisions are interpreted through grammatical,

systematic, and teleological interpretation to clarify their meaning and legal purpose. Third, Shafi'i-based fiqh doctrines are analyzed by examining concepts such as *ridha*, *ikrah*, and *ijbar*, particularly in relation to marriage validity and guardian authority. Fourth, a comparative analysis is conducted using six analytical units: the legal construction of forced marriage, the role of consent, the effect of coercion, the authority of guardianship, legal consequences, and victim protection. Fifth, the findings are synthesized through normative argumentation to determine whether the classification of forced marriage as sexual violence under Law Number 12 of 2022 is consistent with, supported by, or distinct from Shafi'i-based fiqh reasoning. This methodological framework allows the study to move beyond descriptive explanation and develop a systematic legal analysis of forced marriage within both Indonesian positive law and Islamic jurisprudence.

3. Results and Discussion

3.1 The Idea of Forced Marriage as a Crime of Sexual Violence Under Law Number 12 of 2022

Forced marriage is a marital union that takes place without the free consent of one or both parties. The key element in this practice is the loss of individual autonomy due to pressure, threats, manipulation, deception, or abuse of power by family members, guardians, or other parties [20]. Forced marriage cannot be understood merely as a matter of custom or family relations, but also as a violation of the right to bodily autonomy, free will, and the freedom to make life choices [21].

In fiqh discourse, a woman's position in marriage is distinguished based on her status, such as a widow, a mature virgin, or a girl who is not yet mature in terms of age or cognitive development [22]. A widow explicitly requires explicit consent, while a mature virgin, in principle, also cannot be forced to marry against her will [23]. Debate arises regarding the concept of *ijbar*, particularly within the Shafi'i school of thought, which allows a limited scope for a guardian to marry off a minor girl [24]. However, this concept cannot be interpreted as an absolute legitimisation of coercion, as it remains ethically constrained by the principles of public interest, protection, and non-harm.

A thorough scholarly analysis of Law No. 12 of 2022 unequivocally identifies forced marriage as a manifestation of sexual violence. The utilization of threats, coercion, deception, manipulation, or psychological pressure to impede an individual's capacity to provide genuine consent constitutes an abuse of power. In such cases, sexual relations that emerge as a consequence of forced marriage, particularly when the victim does not consent to them, are recognized as a significant component of the violence perpetrated [25]. Forced marriage is not only considered a transgression of marital norms but also an infringement upon bodily and psychological integrity. Contributing Factors to Forced Marriage:

First, a primary factor contributing to forced marriage is economic pressure. In many cases, families in economically disadvantaged circumstances, particularly in rural or underdeveloped regions, resort to arranging marriages for their daughters without their consent due to financial constraints. Families with limited financial resources may perceive marriage as a strategic means of achieving financial independence, particularly if the prospective spouse possesses a stable income. Parents may rationalize this action as a means to ensure a more favorable future for their daughters, one that transcends the financial hardships they have personally experienced. In many cases, the practice of marrying daughters off is driven by the hope that their new husbands will contribute to the family's financial obligations, including paying household expenses, educating younger siblings, or alleviating the family's financial strain [26]. The financial motivations underlying these arrangements underscore the profound impact of poverty and inequality on a girl's capacity to exercise autonomy in determining her marital union.

Second, the concept of lineage (*nasab*) and social status plays a pivotal role in the context of forced marriage practices. In numerous traditional societies, guardians prefer to marry their daughters to men from families at least as well-off as their own. The preference for matrimony within one's own social class is often attributed to the belief that such unions promote domestic tranquility and preserve

familial dignity. A guardian may deem it prudent to choose a spouse based on shared values, moral integrity, religious devotion, and esteemed lineage [25]. However, if the daughter's perspective is overlooked, this inclination may give rise to coercive arrangements. In certain instances, extended families or close relatives arrange forced marriages for the purpose of maintaining social ties and ensuring compatibility between the couple, even if this results in the restriction of the daughter's freedom.

Third, inadequate legal knowledge, specifically a lack of awareness regarding national and religious marriage laws, contributes to the prevalence of forced marriages. Individuals residing in rural areas or traditional Islamic boarding schools may possess limited knowledge regarding legislation such as Law No. 1 of 1974 on Marriage, particularly Chapter II, Article 6, which emphasizes the necessity of obtaining prior authorization prior to marriage. While the term "ijbar" may be recognized by some as an Islamic legal concept, its practical application and specific regulations remain opaque to many. This phenomenon results in the distorted interpretation and exploitation of religious doctrines to justify forced unions. Furthermore, social norms that prioritize obedience to parents as a moral virtue exacerbate this issue, as children may feel compelled to comply with their parents' directives, despite their personal inclinations or developmental readiness [7].

Fourth, cultural traditions are deeply rooted and have a significant impact on marriage customs across various geographical locations. In Akkor Village, for instance, the cultural practices of arranged or forced marriages are held in high regard by the local populace. In such societies, individuals frequently perceive the refusal of a marital proposal selected by their parents as indicative of a lack of respect or gratitude. These cultural norms are not merely social preferences; they serve as mechanisms to safeguard honor, preserve heritage, and maintain familial unity. Consequently, even children who do not wish to marry may do so due to concerns about social exclusion by their peers or the desire to maintain familial harmony [27].

Conventionally, parents, particularly the father or male guardian, have possessed the prerogative to select a suitable husband for their daughter, frequently without ascertaining her consent. These practices are further reinforced by a religious interpretation that grants fathers the authority to select spouses for their daughters. However, these interpretations are often utilized without a thorough comprehension of the ethical and legal limitations prescribed by Islamic law, particularly the Shafi'i school [28]. Despite the prevailing human rights standards and legislation, there is a prevailing societal acceptance of the practice of marital coercion, whereby individuals are compelled to marry against their will, often driven by religious or cultural norms.

Forced marriage is not simply a deviation from standard marriage practices. It is a form of violence rooted in the absence of free consent from the individuals involved. The key elements include pressure, threats, manipulation, abuse of power, or social constructs that give the victim no real room to refuse [25]. A marriage may be formally registered or accepted by the family. However, its ethical validity is problematic if the victim's consent was obtained through coercion. Law No. 12 of 2022 reflects a significant shift in the state's approach to forced marriage. It moves from a private family matter to a form of sexual violence.

The issue becomes even more complex when the practice of forced marriage gains legitimacy from a partial religious interpretation, particularly through the concept of *ijbar*. In the *fiqh* tradition, *ijbar* cannot be separated from the context of protection, public interest, and the legal incapacity of the party being married [29]. However, in social practice, this concept is often simplified to the guardian's absolute authority to determine a woman's spouse. This simplification is problematic because it shifts women's position from legal subjects to objects of family decisions. Criticism of forced marriage should not be framed as a rejection of Islamic law, but rather as a critique of the misuse of *fiqh* concepts to justify unjust power dynamics. The Arabic term for forced marriage is *Ijbar* (إجبار). In Islamic legal terminology, it is predominantly referred to as *Ijbar al-Nikah* (إجبار النكاح) [30].

In his foundational work Fath al-Qadir, Imam Kamal Ibn Al-Humam defines Ijbar as the act of a guardian executing a marriage contract on behalf of a woman, regardless of her personal consent:

معنى الإيجار أن يباشر العقد فينفذ عليها شاءت أو أبت

Meaning: *"The meaning of Ijbar is that the guardian makes the marriage contract, and it is valid whether she agrees or not."*

This interpretation underscores a significant correlation between the legal definition of forced marriage in Indonesia and the traditional concept of forced marriage in Islamic law. There is a consensus that it is ethically and morally reprehensible to compel a woman to enter into matrimony against her will. The legislative act entitled Law No. 12 of 2022 encompasses the concept of forced marriage as a manifestation of sexual violence, a category that has been identified as a salient concern due to the prevalence of violence against women in Indonesia. The National Commission on Violence Against Women reports that in 2021, there were 338,496 reports of violence against women, marking a 50% increase from the previous year. A significant proportion of these cases involved sexual violence, including forced marriage. They underscored the pronounced impact of forced marriage on women, citing their comparatively lower social and cultural status as a key factor [29]. The coercive practice of marriage, involving the use of threats, intimidation, or physical violence, constitutes a profound infringement on an individual's autonomy and dignity. A variety of socio-cultural factors, including patriarchal norms, economic pressures, and traditional customs, perpetuate this practice in Indonesia [31].

The primary tension surrounding the issue of forced marriage lies in the gap between legal norms and social practices. Normatively, positive law has established consent as the primary foundation of marriage. However, in social practice, decisions regarding marriage are still often controlled by families, customs, and patriarchal structures. This gap indicates that the criminalisation of forced marriage is insufficient unless accompanied by a transformation of the society's legal culture. The persistence of forced marriage also highlights the strong influence of patriarchal social structures. In many communities, marriage decisions concern not only the personal relationship between two individuals but also family honour, social status, the continuity of lineage, and economic interests [32]. Daughters are often positioned as a means to uphold family dignity or alleviate the household's economic burden [33]. At this point, marriage ceases to be a space for the formation of an equal relationship and becomes a social mechanism for maintaining family stability. This explains why a woman's refusal of a family-arranged marriage is often viewed as defiance, rather than as an expression of the right to choose one's own life.

Law No. 12 of 2022 enumerates several key reasons for recognizing forced marriage as a form of sexual violence. According to Mohsi's analysis, three primary factors have been identified as contributing to this recognition. Law No. 12 of 2022 serves not only as a criminal law instrument but also as the foundation for victim protection through prevention, response, recovery, and rehabilitation. This regulation reflects a shift in the state's approach from merely regulating the validity of marriage to protecting the physical integrity and autonomy of victims [34]. The utilization of parental authority, typically executed by the guardian, entails the enforcement of marriage with the objective of safeguarding the family's honor. This practice frequently contravenes the child's best interests and liberty. A pervasive societal misconception or misinterpretation regarding the function of wali mujbir (compelling guardian) within Islamic law. And the entrenchment of patriarchal norms that position men as inherently dominant, thereby legitimizing coercion in marriage decisions [35].

The academic text that accompanies Law No. 12 of 2022 discusses various forms of forced marriage in Indonesia, including women frequently find themselves compelled to acquiesce to marital proposals from their familial units, even in instances where they are unacquainted with or disinclined towards the individual with whom they are intended to be wed. The phenomenon of rape victims being compelled to enter into matrimony with their assailants, ostensibly to restore the family's honor. The existence of bureaucratic or patriarchal barriers has been demonstrated to impede women's ability to obtain a divorce or be compelled to remain in matrimony against their will. And the practice of temporary marriages is deeply entrenched in cultural traditions. This practice involves the forced

union of a woman with another man for a brief period, followed by her remarriage to her former husband after triple divorce. This practice contravenes Islamic teachings that advocate for the sanctity of marriage and the rights of women within the marital union [25].

Recognising forced marriage from a legal perspective is considered sexual violence with significant consequences. First, the victim must be positioned as a subject whose rights have been violated, not merely as a party who disobeys the family. Second, the state must ensure that victim protection extends beyond the punishment of the perpetrator to include psychological, social, and economic recovery. Third, preventing forced marriage requires legal and religious education that emphasises that consent is a fundamental requirement in marriage [36]. Addressing forced marriage cannot be achieved solely through a legal-formal approach, but also through cultural transformation, a reinterpretation of the authority of guardians, and the strengthening of women's position as autonomous legal subjects.

3.2 The Shafi'i-Based Fiqh Concept on the Existence of Forced Marriage Under the Right of Ijbar as a Criminal Act of Sexual Violence

In Islamic jurisprudence, particularly within the Shafi'i school of thought, the term *ijbar* signifies the authority wielded by a marriage guardian (*wali*) to initiate a marital union without the consent of the ward. The father is primarily assigned this authority, and in his absence, the grandfather assumes the role [37]. In Islamic law, *ijbar* is defined as the legal right granted to a guardian (*wali mujbir*) to arrange a marriage for a ward, even in the absence of explicit consent from the ward [38]. However, this notion must be evaluated within the broader context of human rights and the individual's well-being (*maslahah*).

The Shafi'i school asserts that a *wali mujbir* may marry a minor girl, a mentally ill woman, or a mature virgin (*al-bikr al-bālighah*) without her consent, contingent upon the fulfillment of specific stringent conditions. It is evident that there is an absence of animosity between the guardian and the ward. The concept of *kafa'ah*, which is defined as compatibility between the bride and groom, is a fundamental aspect of Islamic matrimony. The couple's relationship is characterized by mutual respect and emotional intimacy, indicating that they do not harbor any significant animosity towards each other. The bride's family is permitted to offer a dowry. The bride has expressed contentment with her marital union.

Despite the fact that *ijbar* appears to grant the *wali mujbir* a considerable degree of authority, the legal framework is designed to ensure that these marital agreements are in the best interests of the woman, particularly in cases where she is a virgin. This objective is pursued by prioritizing factors that ensure her safety and maintain her dignity. The *ijbar* concept is predicated on the notion of the *wali mujbir*, or the agent who has the ability to facilitate the process of *ijbar*. The Shafi'i madhhab asserts that a father or grandfather has the right to compel their daughter or granddaughter to marry against her will [39]:

ثقات ينظرون ما عندها، فإن كانت البكر بالغاً فلاب والجد أجبارها على النكاح وإن أظهرت الكراهية، وبه قال ابن أبي ليلى وأحمد وإسحاق

Meaning: "If the virgin child is an adult, the father or grandfather may force her into marriage, even if she expresses dislike for it." (As told by Ibn Abi Laila, Ahmad, and Ishaq) [40].

Islamic law differentiates between two categories of guardianship: *Wali Mujbir*, which refers to a guardian (father or grandfather) who has the authority to marry off a woman without her consent, and *Wali Ghair Mujbir*, which designates a guardian who requires the woman's permission to do so. In his work entitled *Al-Buwaithi*, Imam al-Shafi'i provides a detailed exposition of the conditions that must be met for a guardian to be considered valid:

قال الشافعي في البويطي : لا يكون الولي الا مرشدا : وقال في موضع آخر : وولي الكافرة كافر

Meaning: "A guardian must be a person who provides guidance (murshid)." "The guardian of a non-Muslim woman is also a non-Muslim." [40].

This suggests that the guardian must be a person of integrity. This position is not universally held among Shafi'i scholars, however. Abu Hamid asserts that an individual deemed fasiq (an open sinner) is not eligible to serve as a guardian, while Al-Qaffal contends that a fasiq can act as a guardian in matrimonial matters. Abu Ishaq al-Marwazi employs a distinguishing approach:

وقال أبو اسحاق المروزي ان كان الولي ممن يجبر على النكاح كالأب والجد في تزويج البكي لم يصح أن يكون فاسقاً لأنه يزوج بالولاية ، والولاية لا تثبت مع الفسق، كفسق الحاكم والوصي وان كان على النكاح كمن عدا الأب والجد من الأولياء ، وتزويج الأب والجد للثيب صح تزويجه ، وان كان فاسقاً ، لأنه يزوج باذنها فهو كالوكيل

Meaning: "Abu Ishaq al-Marwazi explained that if the guardian holds the right to compel marriage such as a father or paternal grandfather who may arrange the marriage of a virgin then this authority cannot be exercised by someone who is morally corrupt (fasiq). This is because coercive guardianship requires integrity, and such guardianship is considered invalid if carried out by someone known for wickedness, such as a corrupt judge or a person with malicious intent. However, if the guardian does not possess the right of coercion as in the case of arranging the marriage of a widow then the marriage remains valid even if the guardian is a fasiq, because the act is based on the woman's consent. In such cases, the guardian functions similarly to a legal representative rather than an authoritative guardian." [40].

Consequently, if the guardian is a wali mujbir (father or grandfather), it can be deduced that he must not be a fasiq. In the absence of a wali mujbir, the guardian may be considered a fasiq due to his actions with the woman's consent, akin to an agent (wakil). This demonstrates the multifaceted discourse among legal scholars concerning the qualification of guardians based on their moral rectitude [41]. A person who has demonstrated a pattern of moral corruption may be deprived of the right to act as legal guardian, particularly when that guardianship encompasses the authority to mandate marital union. Among classical scholars, notable differences emerge. Malik and Abu Hanifah posit the notion that a fasiq may serve as a guardian, a proposition that finds substantiation in the Qur'an (An-Nur: 32).

وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ ۚ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ ۗ وَاللَّهُ وَاسِعٌ عَلِيمٌ

Meaning: "Marry the single people among you and the good people among your male and female slaves..."

It has been posited that the verse in question does not offer any insight into the moral rectitude of guardians. In contrast, Imam al-Shafi'i asserts that the guardian must embody justice and possess the capacity to offer ethical counsel. The hadith of the Prophet (SAW) also supports this assertion. As stated in the compendium Kifayatul Akhyar, it is also asserted that,

نِكَاحٌ إِلَّا بِوَلِيِّ وَشَاهِدَيْنِ عَدْلٍ لَا

Meaning: "There is no valid marriage except with a guardian and two just witnesses." (Narrated by Ibn Abbas and others).

لَا نِكَاحٌ إِلَّا بِوَلِيِّ مُرْشِدٍ وَشَاهِدَيْنِ عَدْلٍ

Meaning: "There is no marriage except with a wise guardian and two just witnesses." The Shafi'i school stresses that a marriage guardian must be murshid (wise and morally upright), so a fasiq cannot be a valid wali mujbir [40].

One of the main pieces of evidence for ijbar is the marriage of Aisha (RA) to the Prophet Muhammad (SAW):

حَدَّثَنَا أَبُو كُرَيْبٍ مُحَمَّدُ بْنُ الْعَلَاءِ ، حَدَّثَنَا أَبُو أُسَامَةَ ح ، وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ، قَالَ : وَجَدْتُ فِي كِتَابِي ، عَنْ أَبِي أُسَامَةَ ، عَنْ هِشَامٍ ، عَنْ أَبِيهِ ، عَنْ عَائِشَةَ ، قَالَتْ : تَزَوَّجَنِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لِسِتِّ سِنِينَ ، وَبَنَى بِي وَأَنَا بِنْتُ تِسْعِ سِنِينَ

Meaning: “*The Messenger of Allah married me when I was six years old and had sex with me when I was nine years old.*”

According to certain scholars, the hadith suggests that Abu Bakr (RA), her father, orchestrated her marriage without her consent. This constitutes a principal argument for the principle of ijbar by a father for young girls. However, it is imperative to establish a clear distinction between the historical context and its legal application. The classical Shafi'i perspective does not inherently endorse arbitrary coercion; rather, it permits the father or grandfather to arrange such a marriage within stringent ethical and legal constraints.

According to Imam al-Shafi'i, virginity serves as the fundamental legal basis ('illah) for ijbar, while Imam Abu Hanifah asserts that immaturity, defined as the absence of puberty, forms the foundation for permitting ijbar. In the context of Islamic law, a virgin, irrespective of her age, remains under the authority of her father or grandfather. However, given her prior marital status as a widow, she possesses complete autonomy in making decisions regarding her future matrimony. In contemporary settings, particularly in countries such as Indonesia, ijbar marriages that are performed without consent have ceased due to changes in Islamic family law and an increased emphasis on human rights and individual consent [41]. Despite the adherence to traditional fiqh, its interpretation is increasingly influenced by contemporary moral concerns and modern circumstances.

3.3 Analyzing Forced Marriage as a Violent Crime According to Law Number 12 of 2022 and the Shafi'i Legal Framework

The initial draft of the Academic Manuscript (Naskah Akademik) for Law Number 12 of 2022 regarding the Crime of Sexual Violence categorizes sexual violence into three primary types: rape, sexual exploitation, and human trafficking [42]. Forced marriage demonstrates that consent cannot be understood in purely formal terms. The victim's silence, their presence at the ceremony, or the absence of open refusal does not necessarily imply consent. In the context of family power dynamics and patriarchal culture, silence can be an expression of fear, pressure, or an inability to refuse. Therefore, consent in marriage must be understood as a free, conscious will, uninfluenced by threats or social pressure.

The concept of ijbar is often used reductively in social practice. Within the framework of Islamic jurisprudence, the authority of a guardian cannot be separated from the principles of public interest and protection [43]. However, when ijbar is used to silence women, the concept shifts from a protective mechanism to an instrument of domination. This is where the problem lies: not in the existence of the discourse of Islamic jurisprudence, but in the way religious interpretations are used to justify unequal power relations.

The recognition of forced marriage as sexual violence in Law No. 12 of 2022 demonstrates a convergence between the principles of positive law and Islamic moral values. Both view coercion as an element that undermines the legitimacy of a legal act. In Islamic law, coercion nullifies the validity of consent; in positive law, coercion renders marriage a form of sexual violence. This convergence is significant because it demonstrates that protecting victims does not conflict with religious values; rather, it aligns with the principles of justice, the public good, and the protection of human dignity.

This perspective aligns with Islamic jurisprudence, particularly the Shafi'i school, which emphasizes consent (*ridā'*) as a fundamental prerequisite for the legitimacy of marriage. In Islamic jurisprudence, consent is not merely a social formality but a legal necessity, particularly in the case of women who are of sound mind and maturity (*bālighah 'āqilah*). A ḥadīth from the Prophet Muhammad (peace be upon him) makes this very clear:

حَدَّثَنَا عَلِيُّ بْنُ حُجْرٍ، حَدَّثَنَا مُعَمَّرُ بْنُ سُلَيْمَانَ الرَّقِّيُّ، عَنِ الْحَجَّاجِ بْنِ أَرْطَاةَ، عَنْ عَبْدِ الْجُبَّارِ بْنِ وَاثِلِ بْنِ حُجْرٍ، عَنْ أَبِيهِ، قَالَ اسْتُكْرِهَتْ امْرَأَةٌ عَلَى عَهْدِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَدَرَأَ عَنْهَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْحَدَّ وَأَقَامَهُ عَلَى الَّذِي أَصَابَهَا وَلَمْ يُذَكَّرْ أَنَّهُ جَعَلَ لَهَا مَهْرًا . قَالَ أَبُو عِيسَى هَذَا حَدِيثٌ غَرِيبٌ وَلَيْسَ إِسْنَادُهُ بِمُتَّصِلٍ وَقَدْ رُوِيَ هَذَا الْحَدِيثُ مِنْ غَيْرِ هَذَا الْوَجْهِ . قَالَ سَمِعْتُ مُحَمَّدًا يَقُولُ عَبْدُ الْجُبَّارِ بْنُ وَاثِلِ بْنِ حُجْرٍ لَمْ يَسْمَعْ مِنْ أَبِيهِ وَلَا أَذْرَكَهُ يُقَالُ إِنَّهُ وَلَدَ بَعْدَ مَوْتِ أَبِيهِ بِأَشْهُرٍ . وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَغَيْرِهِمْ أَنَّ لَيْسَ عَلَى الْمُسْتَكْرِهَةِ حَدٌّ

Meaning: “A woman was forced during the time of the Messenger of Allah ﷺ. He did not punish her with the *hadd* punishment but did punish the man who violated her.” (Tirmidhī, ḥadīth gharīb).

Despite the absence of complete connection (non-muttaṣil) in the isnād, this particular narration, corroborated by other substantiating sources, substantiates the doctrine that coercion exonerates the victim from culpability, thereby absolving them entirely and attributing full responsibility to the perpetrator. Islamic jurists, including Shafi'is, employ this reasoning analogically (*qiyās*) to forced marriage: coercion invalidates consent and thus undermines the fundamental basis of the marriage contract.

Law No. 12 of 2022 criminalizes forced marriage in Indonesia. This development follows earlier modifications, including Law No. 16 of 2019, which amended the Marriage Law No. 1 of 1974, thereby establishing the legal marriageable age as 19 for both men and women. The aforementioned regulations not only serve to safeguard individual autonomy but also impede guardians' ability to compel individuals to enter matrimony. Furthermore, Article 109 of the Kompilasi Hukum Islam (KHI) grants Religious Courts the authority to revoke guardianship in cases where the guardian exhibits abusive behavior [44]. This encompasses practices such as forced marriages, which are consistent with the Islamic legal principle that guardianship is a trust, not a privilege.

In certain communities, the practice of *ijbār* persists, with adherents asserting that it remains permissible under religious doctrine despite the legal amendments. It is imperative to acknowledge that:

First, parents should not compel their children to engage in activities; rather, they should provide instruction and guidance. Second, it is imperative that individuals enter matrimony only when they have attained optimal levels of physical and mental readiness. Third, The involvement and ability to communicate honestly with each other are essential elements for the success of the marriage.

Sexual violence is a broad category that encompasses a wide range of behaviors and actions, both physical and non-physical in nature. These include exposure to sexually explicit material and physical acts involving *Fashiyah* (morally indecent or taboo behavior), such as kissing, caressing, or touching the private parts of another person or oneself, especially when these acts are deliberately performed in front of certain individuals or groups [45]. Furthermore, sexual violence may manifest in the form of written or spoken language that contains sexually abusive or exploitative content.

Sexual violence constitutes a grave infringement on human rights, not solely in consideration of its physical ramifications. This practice undermines a person's honor, dignity, and bodily autonomy, constituting a form of discrimination that must be addressed and prevented. According to Article 1, paragraph (1) of Law No. 12 of 2022 on the Crime of Sexual Violence, the term "sexual violence" is defined as any act that meets the criteria for a crime as defined by the law. This encompasses

additional acts of sexual violence that are not explicitly enumerated but are nevertheless encompassed by the purview of the law. The objective is to ensure comprehensive coverage and appropriate sanctioning of all manifestations of sexual abuse.

Table 1. Similarities

No	Indicator	Law Number 12 of 2022	Shafi'i Legal Based
1	Culture	Forced marriage conducted under the guise of cultural tradition is classified as a form of sexual harassment.	
2	Object	Individuals who are under the legal guardianship of the perpetrator of the forced marriage.	

Source: Processed Data

Table 2. Differences

No	Indicator	Law Number 12 of 2022	Shafi'i Legal Based
1	Age	A specific classification applies to forced marriages involving children under the age of 18.	The classification regarding the marital status of individuals includes widows, mature (adult) virgins, and immature (young) virgins.
2	Person	Anyone, without exception, is subject to criminal prosecution if they violate the law.	A Wali Ijbar (father or grandfather) who coerces a marriage is subject to specific criteria, particularly if he is deemed morally corrupt (fasiq) or fails to engage in prior consultation and deliberation.
3	Law	Individuals who commit forced marriages will be subject to legal sanctions or criminal penalties in accordance with the law.	In the context of fiqh, those who carry out forced marriages are not subject to criminal penalties but are instead bound by normative rules and guidelines that serve as ethical and legal standards.
4	Opportunity for coercion	There is no legal or moral justification that allows any loophole or opportunity for forced marriage to take place.	The permissibility for a mujbir wali to arrange a forced marriage still exists under certain conditions, such as the absence of any evident hostility or conflict between the guardian and the child.

Source: Processed Data

A comparison of Law No. 12 of 2022 on the Crime of Sexual Violence and the Shafi'i school of Islamic jurisprudence (fiqh) on forced marriage reveals that there are some areas of agreement between the two legal systems, while there are other areas of disagreement. A comparison of the two frameworks reveals two important similarities: the cultural context and the topic of forced marriage. Both legal systems categorically reject the practice of forced marriage when it is carried out under the pretext of preserving tradition or local customs. There is a consensus that individuals under the care or authority of another, such as children or dependents, are susceptible to forced marriage, and both parties advocate for the regulation of such relationships.

However, substantial disparities emerge in other domains, including the demographic characteristics of the offenders, the legal ramifications, and the potential for coercion. It is evident that Law No. 12 of 2022 exhibits a more universal and secular approach to the law. The document elucidates the minimum age requirement, metes out consequences to those who facilitate or

perpetrate forced marriages, and unequivocally prohibits any form of coercion in marriage, without exception.

In contrast, the Shafi'i fiqh places significant emphasis on the personal status of the individuals entering into matrimony, particularly whether they are virgins, have reached puberty, or are widows. In the context of fiqh, the legal ramifications of marriage are typically addressed only after the matrimonial union has been established. These discourses frequently center on the legitimacy of the marriage and the woman's prerogative to terminate it. Additionally, although fiqh permits coercion in certain circumstances, these exceptions can be exploited to perpetrate abuse, a practice that contravenes the stringent provisions outlined in Law No. 12 of 2022. In conclusion, both systems aim to prevent harm from forced marriages; however, they differ markedly in scope, legal enforcement, and doctrinal flexibility, which illustrates their unique foundations in contemporary human rights law and traditional Islamic jurisprudence. Social constructions and community perceptions regarding 'fairness' and 'authority' in family matters frequently diverge from the strict protection of individual rights outlined in modern statutes [46].

4. Conclusion

The study finds that forced marriage is a form of sexual violence rooted in the lack of free, informed, and voluntary consent. Coercion in marriage can involve threats, psychological pressure, social intimidation, manipulation, economic dependence, or abuse of guardianship authority. Law No. 12 of 2022 marks a key shift in Indonesian law by defining forced marriage as a violation of bodily autonomy, dignity, and human rights, not just a family matter or cultural practice. This aligns with Islamic legal reasoning, specifically the principle of *ridā'*, which holds that consent is essential in marriage. Although *ijbār* exists in classical jurisprudence, it should not be seen as unlimited authority but rather as a limited responsibility to protect, provide welfare, and uphold moral accountability. The study also shows that forced marriage continues because of patriarchal norms, cultural expectations, economic pressures, low legal literacy, and selective readings of religious authority. Preventing forced marriage needs more than laws; it requires legal education, gender-sensitive religious interpretation, victim-focused protection, and broader social change that treats women and girls as autonomous legal subjects. This study does not examine empirical cases, victim stories, or court actions after Law No. 12 of 2022. Future research should review how forced marriage cases are managed in religious courts and local communities, and explore victims' experiences and resistance methods in their family and cultural contexts.

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