

# Legal Discourse on Contract Marriage in Indonesian and Islamic Law

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## Abstract

Contract marriage, also known as temporary or mut'ah marriage, has garnered significant attention within both Indonesian civil law and Islamic legal frameworks. This paper examines the legal discourse surrounding contract marriage in Indonesia, juxtaposing it with principles derived from Islamic jurisprudence. Through a comprehensive analysis of legal texts, court cases, and scholarly opinions, this study explores the complexities and divergent interpretations surrounding the validity, implications, and societal perceptions of contract marriage in Indonesia. The paper begins by delineating the historical background and evolution of contract marriage within Indonesian society, tracing its roots in Islamic tradition and its assimilation into the legal framework of the nation. Subsequently, it delves into the multifaceted legal perspectives on contract marriage, scrutinizing debates regarding its legality, morality, and socio-cultural implications. Furthermore, this paper scrutinizes the judicial stance on contract marriage, examining landmark court cases and legal precedents that have shaped its legal status and societal reception. It also evaluates the role of religious authorities and their interpretations of Islamic law concerning contract marriage, shedding light on the discrepancies between



legal theory and practical implementation. Moreover, the paper explores the socio-cultural ramifications of contract marriage within Indonesian society, analyzing its impact on gender dynamics, familial structures, and broader social norms. The study investigates the intersections of contract marriage with issues such as women's rights, marital stability, and religious identity, providing insights into the complex interplay between legal, religious, and socio-cultural factors.

**KEYWORDS** *Contract Marriage, Islamic Law, Legal Discourse*

## Introduction

In both Indonesian civil law and Islamic jurisprudence, the concept of contract marriage, also known as temporary or *mut'ah* marriage, occupies a significant position, evoking intricate legal debates and socio-cultural considerations. Contract marriage, characterized by its temporary nature and specific contractual arrangements, stands at the intersection of legal principles, religious doctrines, and societal norms.<sup>1</sup> Its practice raises questions regarding legality, morality, and its implications for individuals and society at large.

On the other hand, marriage represents a profound dual bond, both legally and spiritually. Legally, it stands as a birth bond—a formal, contractual relationship between a man and a woman, sanctioned to live

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<sup>1</sup> Ibnu Fiyan Afifi, "Tinjauan Yuridis Mengenai Kawin Kontrak Serta Akibat Hukumnya Terhadap Istri dan Anaknya." *Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang* 3, No. 1 (2014). See also Andi Hidayat Anugrah Ilahi, "The Evaluation of Early Marriage Law Renewal in Indonesia." *Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang* 7, No. 1 (2021): 129-152; Dian Latifiani, "The Darkest Phase for Family: Child Marriage Prevention and Its Complexity in Indonesia." *JILS (Journal of Indonesian Legal Studies)* 4, No. 2 (2019): 241-258; Akrimatil Izat, "Contract Marriage in Indonesia: Controversial and Contemporary Issue on Law and Its Impact." *The Indonesian Journal of International Clinical Legal Education* 2, No. 4 (2020): 407-420; Ayun Nawati, "Fenomena Kawin Kontrak dalam Perspektif Gender di Kabupaten Jepara." *IJTIMAIYA: Journal of Social Science Teaching* 2, No. 2 (2018).

together as husband and wife. This legal union is not merely symbolic; it carries tangible significance, benefiting not only the individuals involved but also society at large. Its solemnization often takes place through the marriage ceremony or akad in Islamic tradition.

Conversely, marriage is also an inner bond—a connection of souls forged by mutual willingness and sincerity between partners. This intrinsic bond begins its inception with the consent of the prospective bride to enter into matrimony. As the journey unfolds, the depth of this inner bond becomes apparent through the harmony and mutual respect exhibited by the husband and wife. Indeed, the convergence of legal formalities and heartfelt connections serves as the cornerstone in shaping and nurturing a happy and enduring family unit.<sup>2</sup>

For this context, the practice of contract marriage, is prevalent in various regions of Indonesia, including Jepara (Central Java), East Java, Bogor Peak (West Java), and Singkawang (West Kalimantan).<sup>3</sup> In the terminology of Islamic law, *mut'ah* marriage refers to a temporary union entered into primarily to fulfill physical desires or for leisure, involving a marriage contract between a man and a woman for a specified duration, be it a day, a week, or a month.<sup>4</sup>

This phenomenon manifests in several parts of Indonesia, often facilitated by local men acting as intermediaries who seek out women willing to enter into temporary marriage agreements. Additionally, foreign men, particularly from the Middle East, are also involved in these arrangements. In such cases, once a Middle Eastern man is matched with a prospective bride through intermediaries, the marriage proceedings commence. While the marriage ceremony involves the presence of an officiant and witnesses, the intermediary plays a central role in coordinating the logistics, including the venue and other necessary arrangements. Consequently, the contractual agreement mainly revolves around the terms of the marriage duration and financial arrangements.<sup>5</sup>

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<sup>2</sup> Riduan Syahrani, *Seluk Beluk dan Asas-Asas Hukum Perdata*. (Bandung: PT. Alumni, 2006).

<sup>3</sup> Abd Shomad, *Hukum Islam*. (Jakarta: Kencana Prenada Media Group, 2010).

<sup>4</sup> Mardani Mardani, *Hukum Perkawinan Islam*. (Yogyakarta: Graha Ilmu, 2011).

<sup>5</sup> Shafra Shafra, "Nikah kontrak menurut hukum Islam dan realitas di Indonesia." *Marwah: Jurnal Perempuan, Agama dan Jender* 9, No. 1 (2010): 15-27.

This paper embarks on an exploration of the legal discourse surrounding contract marriage within the frameworks of Indonesian civil law and Islamic jurisprudence. By delving into the historical roots, legal precedents, and socio-cultural dynamics, this study seeks to unravel the complexities inherent in the understanding and regulation of contract marriage.

The Indonesian archipelago, with its diverse cultural and religious landscape, presents a unique context for examining contract marriage. Historically, Indonesia has been influenced by various legal traditions, including indigenous customs, Dutch colonial law, and Islamic jurisprudence. Within this complex legal tapestry, the status and regulation of contract marriage have evolved, shaped by legal reforms, religious interpretations, and societal changes.

In the another circumstances, the incorporation of Islamic law (*Sharia*) into the Indonesian legal system further complicates the discourse on contract marriage. While Islamic law provides guidance on marriage contracts, including temporary unions, its interpretation and application within the Indonesian context vary, reflecting diverse schools of thought and socio-political realities.

Furthermore, it's essential to recognize that contract marriages hold no legal validity under both Islamic law and Law No. 1 of 1974 regarding Marriage. Consequently, such unions lack legal recognition and are deemed nonexistent in the eyes of the law. This absence of legal status extends to the children born from contract marriages, who are not acknowledged as having a legitimate lineage or familial ties with their father and the broader family. Similarly, the wife in a contract marriage cannot assert her legal rights as a spouse during the marriage, thereby rendering any disputes or issues arising from the union unable to be resolved in religious courts.

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*See also* Muhamad Ramdan Arifin, "Tinjauan Hukum Islam terhadap Implikasi Fenomena Kawin Kontrak dalam Kehidupan Sosial, Ekonomi Masyarakat Desa." *Khazanah Hukum* 1, No. 1 (2019): 1-12; Andreas Resa Ari Krisharyanto, Sophar Maru Hutagalung, and Slamet Supriatna. "Akibat Hukum Kawin Kontrak terhadap Kedudukan Istri, Anak dan Harta Kekayaan dalam Perspektif Hukum Islam." *Krisna Law* 1, No. 1 (2019): 1-12.

Moreover, the repercussions of contract marriages are keenly felt by the children born from these unions. Due to the lack of legal recognition, children born from contract marriages are denied inheritance rights from their father, compounding the legal and social ramifications of these unions. Thus, the legal void surrounding contract marriages not only impacts the spouses involved but also extends to affect the welfare and status of the children born from such unions.

This paper aims to navigate through these complexities, shedding light on the legal, religious, and socio-cultural dimensions of contract marriage in Indonesia. Through an interdisciplinary approach that draws on legal texts, court rulings, religious doctrines, and sociological analyses, it seeks to elucidate the divergent perspectives and contested interpretations surrounding this practice.

Furthermore, this study endeavors to explore the implications of contract marriage on individuals and society, particularly in relation to gender dynamics, familial structures, and broader socio-cultural norms. By examining the intersections of contract marriage with issues such as women's rights, marital stability, and religious identity, it aims to provide insights that inform legal discourse, policy-making, and societal attitudes towards this contentious practice. This paper also strives to contribute to a nuanced understanding of contract marriage within the Indonesian and Islamic legal contexts, highlighting the complexities and challenges inherent in regulating and interpreting this form of marital arrangement. It underscores the importance of engaging with legal, religious, and socio-cultural perspectives in addressing the multifaceted issues raised by contract marriage, towards fostering a more equitable and just legal framework that resonates with the realities of Indonesian society.

As highlighted at the previous that the legal discourse on contract marriage within Indonesian and Islamic law presents a novel area of inquiry, offering insights into a complex and multifaceted aspect of marital practices. While prior research has extensively explored various facets of marriage law and practices in both Indonesia and Islamic jurisprudence, the specific focus on contract marriage represents a unique contribution to legal scholarship. Notably, recent studies have delved into the socio-

cultural implications of contract marriages within Indonesian society,<sup>6</sup> shedding light on the lived experiences of individuals involved in such unions and their impact on familial structures. Additionally, research has examined the historical evolution of contract marriage and its assimilation into Indonesian legal frameworks,<sup>7</sup> providing valuable context for understanding its contemporary manifestations. Furthermore, studies have explored the intersectionality of contract marriage with gender dynamics and women's rights in Islamic law,<sup>8</sup> offering critical perspectives on the implications of such unions for gender equality and justice.

Moreover, analyses have investigated the judicial treatment and legal recognition of contract marriages in Indonesian courts,<sup>9</sup> highlighting discrepancies between legal theory and practical implementation. Additionally, research has explored the ethical considerations and religious interpretations surrounding contract marriage within Islamic legal discourses,<sup>10</sup> offering insights into the theological debates and moral dilemmas inherent in these unions. By synthesizing and building upon these prior studies, the present research aims to deepen our understanding of contract marriage within Indonesian and Islamic legal frameworks, contributing to ongoing scholarly discourse and informing policy debates on this complex issue.

The research methodology adopted for this study is normative legal research, focusing on the analysis of legal principles and legislation relevant to contract marriage. Utilizing primary legal materials including the Civil

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<sup>6</sup> Nindita Fajria Utami, and Siti Sarah Masripah. "Marriage Contract in Gender Perspective." *Proceedings of the 2nd International Conference on Sociology Education (ICSE 2017)* Vol. 2 (2018): 16-19.

<sup>7</sup> Aliyu Alhaji Rabi'u, Dahiru Inuwa Ibrahim, and Jaafar Sa'ad. "Islamic Principles on Khitbah and Courtship Versus the Effects of Social Media on Muslim Marriages in Northern Nigeria." *Jurnal Syariah* 27, no. 1 (2019): 113-144.

<sup>8</sup> Muhammad Faizul Haque, et al. "Women Rights to inheritance in Muslim Family Law: an analytical study." *International Journal of Islamic Business & Management* 4, no. 1 (2020): 15-26.

<sup>9</sup> Andrias Wibowo, "Pandangan Tokoh Agama Loram Kulon Tentang Poligami dengan Cara Nikah Sirri". *Thesis* (Kudus: STAIN Kudus, 2017).

<sup>10</sup> Waqas Ahmad, Khurram Baig, and Shaukat Hussain. "Role of Wali in Contract Marriage of Islam: A Critical Analysis." *Journal of Law & Social Studies (JLSS)* 4, no. 3 (2020): 409-418.



Code, Law Number 1 Year 1974 Regarding Marriage, and Government Regulation Number 9 Year 1975 Concerning the Implementation of Law Number 1 of 1974 Regarding Marriage, alongside secondary legal materials such as scholarly publications including books, journals, theses, and dissertations, this study aims to provide a comprehensive examination of contract marriage within the Indonesian legal context. Additionally, tertiary legal materials including dictionaries and encyclopedias are consulted to supplement the analysis. Employing a literature study method, this normative research seeks to establish a theoretical foundation by synthesizing expert opinions and legal analyses, thereby offering insights into the legal intricacies and implications of contract marriage. Through this academic inquiry, the study aims to contribute to the scholarly discourse on contract marriage, informing legal scholarship and practice in Indonesia.<sup>11</sup>

## **Occurrences of Contract Marriage Cases in Indonesia: Understanding Their Detrimental Effects**

Marriage is a very important institution in society because it can legalize the legal relationship between a man and woman.<sup>12</sup> Indonesia as a country that high values of religion and norms of society is certainly very critical in determining the validity of a marriage. Although there is no quantitative data and no marriage laws apply in Indonesia, but in fact the marriage contract has been many and growing in Indonesia, especially in industrial areas that involve many foreign investors. Marriage contracts that occur in Indonesia generally occur with various underlying modes. But often marry the contract is done for economic reasons, namely women who marry the contract hoping to get welfare improvement after marriage contract. This is because women who marry the contract usually get some material for the ability to be a contract wife. In the study of Islamic law as well as national law in Indonesia, the differences can be seen from three

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<sup>11</sup> Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum*. (Jakarta: Ghalia, 1994).

<sup>12</sup> Salim H.S, *Pengantar Hukum Perdata Tertulis*. (Jakarta: Sinar Grafika, 2002).

aspects, namely: Legal, Social and Worship.<sup>13</sup> Marriage of contracts in Indonesia mostly occur in West Java, especially Bogor in Cisarua, Bekasi, Indramayu and Cianjur areas in Ciloto area during July, August and September. However, outside of these times, it also does not close the possibility of the practice of marrying the contract. The phenomenon of the number of Arab tourists in the region Cisarua Bogor or precisely in the West Java Peak has long been known to the public.

In general their arrival, but some of them there are also open businesses there. The presence of Arab tourists, on the one hand has a positive impact that has stretched the economy in the community kawasan it. But on the other hand based on several studies, there emerged some social phenomenon in the complain of the community that is the practice of contract marriage.<sup>14</sup> Married contracts that have existed since 28 years ago this had become very famous to foreign countries, especially to the State of the Middle East. In the past, women who contracted marriages were local girls who were usually forced by their families to marry Arabs on the grounds of economic necessity. The presence of Middle Eastern tourists has indeed revived all aspects of tourism and provides many advantages for the local community as well as for the local environment.

Tourists are visiting Indonesia, there is just a vacation, but not a few who want to enjoy local women for a while. They marry the contract only to seek pleasure for sexual intercourse legally. After three months they returned to their home country. While for Indonesian citizens, especially women believe that women involved in the contract marriage, they do so

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<sup>13</sup> Kamal Mukhtar, *Asas-Asas Hukum Islam Tentang Perkawinan*. Cet 3. (Jakarta: Bulan Bintang, 1993). See also Suhadi Suhadi, Baidhowi Baidhowi, and Cahya Wulandari. "Pencegahan Meningkatnya Angka Pernikahan Dini dengan Inisiasi Pembentukan Kadarkum di Dusun Cemanggal Desa Munding Kecamatan Bergas." *Jurnal Pengabdian Hukum Indonesia (Indonesian Journal of Legal Community Engagement) JPHI* 1, No. 1 (2018): 31-40; Xavier Nugraha, Risdiana Izzaty, and Annida Aqila Putri. "Rekonstruksi Batas Usia Minimal Perkawinan Sebagai Bentuk Perlindungan Hukum Terhadap Perempuan (Analisa Putusan MK No. 22/Puu-Xv/2017)." *Lex Scientia Law Review* 3, No. 1 (2019): 40-54.

<sup>14</sup> Abdul Jamil Wahab, Kustini Kustini, and Muchtar Ali. "Fenomena Kawin Kontrak dan Prostitusi 'Dawar' di Kawasan Puncak Bogor." *Al Qalam* 35, No. 1 (2018): 127-152.



for economic reasons. Financial problems become the main reason for marriage contract, because in the contract marriage the price is set high enough can reach 5 million rupiah even reach 7 million rupiah. This number can solve some of the economic problems they face.

The longer the time period, the higher the tariff and expensive. This method is considered better than melakukan adultery, because marriage justifies the relationship of husband and wife.<sup>15</sup> The marriage of the contract is not through application, they directly carry out the contract in the women's residence or other place with guardians and witnesses who are all false. Usually the witness is only pretend, but the Arab is also not investigate or ask the truth of it. Although not dilampukian application, but still use the dowry is usually a sum of cash and no wedding receptions in the marriage contract. After the conclusion of the marriage ceremony, then the woman was brought to the villa in the area Cisarua Puncak, where the Arabs had rented it for this.

The location of the marriage can be in the area of origin of the woman's area is not necessarily at home sometimes going home. this fake marriage can also be done in other areas such as in jakarta or in cisarua depending on the demand of Arab men. Usually the woman will be conveyed by the contact person to the agreed place complete with guardian and witness. In addition to marriage contracts that occurred in Bogor, the phenomenon of contract marriage also occurred in Jepara Central Java, namely contract marriage is used as a means for foreigners who do business in Jepara. Contract marriage is not just the biological or sex needs of foreigners, but also as a way for them to continue and develop their business in Jepara. The practice of contract marriage in Jepara regency raises its own problems, especially with regard to its validity and legal impact. From the analysis of the data and the deep enough discussion, the results can be concluded that economic needs are the dominant factors that cause women to marry contracts in Jepara.

The contract marriages they undergo do not have legal legality, both in terms of national marriage law and the view of the Compilation of Islamic Law. The Marriage Protection contract they undergo does not

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<sup>15</sup> Siti Sarah Maripah, "Fenomena Kawin Kontrak di Kawasan Puncak Bogor." *SOSIETAS* 6, No. 2 (2016).

have legal legality, both in the case of National marriage law and the view of the Compilation of Islamic Law. For those who contract marriage by sirri, during the marriage has not felt the impact. but after the marriage has been broken, the legal effect is that the ex-wife should not claim the property of gono gini and inheritance. After marriage with foreign men, Jepara women usually change the value system of Javanese cultures into European culture. For example from communal to individual and so on.<sup>16</sup>

Various speculations about contract marriages that have a negative impact on women marriage contracts may indeed be true, some do feel disadvantaged, as this not only affects the negative image of society, but also the psychological impact that will be felt after the marriage contract ends. In addition to the negative impact felt by the woman, another negative impact is also felt by the child who was born as a result of the contract.

A marriage that is held and declared legitimate brings the result of the child born to occupy the position of the legitimate child. This can be seen in article 42 of the Marriage Act that a lawful child is a child born in or as a result of a legitimate marriage.<sup>17</sup> This brings consequences in the field of inheritance. For a child born outside of marriage has only a civil relationship with his mother and his mother's family. In this case, of course, the woman and the child who are harmed because in Indonesia married the contract is not recognized so there is no legality of marriage obtained by the woman, notabnya children born from contract marriage does not have birth certificate. So that the child can not demand anything because if the marriage was over then the husband was gone and can no longer provide a living let alone treasure gono-gini to women married contract and his son.

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<sup>16</sup> Eko Handoyo, and Heri Rohayuningsih. "Kawin Kontrak: Latar Belakang, Keabsahan Hukum dan Dampaknya (Studi kasus di Kabupaten Jepara)." *Forum Ilmu Sosial* 40, No. 2 (2013).

<sup>17</sup> Moch Isnaeni, *Hukum Perkawinan Indonesia*. (Bandung: PT Refika Aditama, 2016).

## **Contract Marriage: A Comparative Analysis of Civil and Islamic Law Perspectives**

Marriage Contract under Civil Law The Civil Code sees marriage only in Civil relations relationships. The Civil Code regulates the legal requirements of the agreement contained in Article 1320, namely:

1. Agreement By treating the agreement, it means that both parties must have freedom of will. The parties do not get any pressure that implies a defect for the realization of the will. Pengertain agreed in painting as a statement of will that is agreed between the parties.
2. Skills Skill is the ability to make an agreement. By law, the skills include the authority to take legal action.
3. A certain thing A certain thing relates to the object of the covenant (chapters 1332 to article 1334 of the Civil Code).
4. Agreements whose objects are unclear because they can not be determined by type, or can not be traded or can not be nilied with money, or which are not possible, become null and void.

A lawful cause these further four elements in the growing doctrine of law, are categorized into:

1. Two main elements relating to the subject (party) who entered into an agreement (subjective element)
2. Two other key elements that deal directly with the object of the agreement (objective element).

The non-fulfillment of any of the elements of the two elements causes defects in the agreement, and the agreement is with an abomination, both in cancelable form (subjective element) and null and void (objective element). In accordance with Article 1332 of the Civil Code which explains that something which can be agreed upon by objective terms is in the form of tradable goods, but in the contracted marriage contract the object of the treaty is a time-limited marriage in which time-bound marriage is not is a good and can be traded. This clearly violates the objective requirement of the agreement that is a certain thing, in which the object of a covenant must be clear and can be determined its type.

The next objective condition that is not met is a lawful cause. The marriage agreements contained in the contract marriage are strongly

contrary to marriage agreements set forth in the Civil Code, the Marriage Act (Article 1) and the Compilation of Islamic Law (Articles 2, 5 and 6). A cause is prohibited if prohibited by law or against good morality and public order. The contents of the marriage agreement in the contract marriage shall govern the duration or length of marriage, the remuneration of one party, the rights and obligations of both parties, other matters deemed necessary.<sup>18</sup> In the Civil Code there is a special law on marriage that is Law Number. 1 year 1974. In the formulation of marriage according to law number 1 year 1974 it is also mentioned the purpose of marriage is to form family (household) is happy and eternal. This means that marriage is not temporary or for a certain period of time planned, but for a lifetime or forever, and should not be broken. Therefore, it is not permitted for marriages that are only temporarily suspended such as contract marriages. Termination of marriage by divorce only i allow in a very forced circumstances. Previously we need to know that in this law set the principles and principles of marriage and all things related to the marriage that has been adapted to the development and demands of the times. The principles or principles contained in this law are as follows:

1. The purpose of marriage is to establish a happy and eternal family. For that husband and wife need to help each other and complement, so that each can develop personality to help and achieve spiritual and material welfare.
2. In this law it is stated that a marriage is lawful to do according to the law of each religion and its belief; and in addition each marriage must be in cartat according to the prevailing laws and regulations.
3. This law adheres to the principle of monogamy. only when the wishes of the person concerned are concerned, since the law and religion of that person permit it, a husband may take more than one wife. However, the marriage of a husband with more than one wife, although it is desirable by the parties concerned, can only be done if in compliance with certain conditions and decided by the court.

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<sup>18</sup> Mutiara Citra, Rika Lestari, and Rahmad Hendra, "Tinjauan Yuridis Terhadap Kawin Kontrak dalam Perspektif Hukum Perjanjian dan Hukum Islam", *Jurnal Online Mahasiswa Fakultas Hukum Universitas Riau* 3, No. 1 (2016): 2-16

4. This law adheres to the principle that the husband and wife must have cooked the soul of the body to be able to marry, in order to realize the goal of marriage well without ending in divorce and get the offspring well and healthy.
5. Since the purpose of marriage is to form a happy, eternal and prosperous family, this law embraces the principle of exchanging marriage.
6. The right of the wife is equal to the rights and the husband's occupation both in the life of the household and in the community. These principles and principles should be applied in a marriage, but in reality contractual abuses do not apply any of the principles or principles. As if to make marriage as a game, whereas marriage is a form of iktan very sacred both in the eyes of law and religion.

## Contract Marriage Under Islamic Law

Marriage law is an integral part of Islamic shari'ah, which is inseparable from the dimensions of Islamic aqid and morals. On the basis of this marriage law wants to realize marriage among Muslims into marriages that morals because of this marriage that can be expected to have a sacred value to achieve marriage goals that with the objectives of Islamic shari'ah.<sup>19</sup> The purpose of marriage in Islam is to fulfill God's instructions in order to build a harmonious, prosperous and happy family.<sup>20</sup> In addition, to produce and preserve the offspring. Islam considers that marriage is not merely an ordinary civil contract or relationship, but rather that besides civil contract also has dimension aspect of *ubudiyah*. therefore the nuanced marriage of terms with niali and to reach the household

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<sup>19</sup> M. Anshary MK. *Hukum Perkawinana Indonesia*. (Yogyakarta: Pustaka Pelajar, 2010).

<sup>20</sup> Wahyu Wibisana, "Pernikahan dalam islam." *Jurnal Pendidikan Agama Islam-Ta'lim* 14, No. 2 (2016): 185-193; Moh Faizur Rohman, "Implikasi Putusan Mahkamah Konstitusi Nomor 69/PUU/XIII/2015 Tentang Perjanjian Perkawinan terhadap Tujuan Perkawinan." *al-Daulah: Jurnal Hukum dan Perundangan Islam* 7, No. 1 (2017): 1-27.

*sakinah, mawaddah* and *warrmah* need to implement perfectly in accordance with the validity of applicable law.<sup>21</sup>

In Islamic law a marriage agreement is described in the QS. An-Nisa verse (4). The marriage contract in Islam is known by the term *mut'ah* marriage which means the marriage is cut off. [16] The marriage contract was initially permitted by the Prophet Muhammad SAW at the time when the war forces were far away from his wife and family, but Rasulullah SAW forbade the *mut'ah* marriage and forbade it until the Day of Resurrection. The basis of *mut'ah* marriage is present in the QS. Al-Mukminun verses 5 and 6 which means "*and those who keep his cock, except to their wives or slaves that they have, then they are indeed not blameworthy*". And hadits of Prophet Muhammad SAW prohibition of marriage *mut'ah* in by Rasulullah SAW. The characteristics of contract marriage, which are as follows:

1. Ijab qabul uses the word marriage or with the word contract
2. Without a guardian
3. Without witnesses
4. There is a time-limited provision
5. There is no inheritance mearisi between husband and wife
6. There is no divorce

A marriage conducted without witnesses and guardians is null and void, because the guardian and witness are included in the marriage pillars. a marriage ends when there is a judgment of divorce, and death. Different terms with the marriage of the contract expires when the time limit has been agreed upon has been exhausted, and in the absence of divorce. This is clearly contrary to the teachings of Islam. The Indonesian Ulema Council (MUI) expressly states that the marriage law of the contract is haram. This is in accordance with the fatwa. Kep-B679 / MUI / IX / 1997. The fatwa decided that a marriage contract was forbidden. The conduct of *mut'ah* marriage can be reported and prosecuted and if proven strong can be in law.<sup>22</sup> The marriage of these contracts is quantitatively difficult

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<sup>21</sup> Haris Hidayatulloh, "Pro-Kontra Nikah Mutah dalam Perspektif Maqasid Al-Shari'ah." *Religi: Jurnal Studi Islam* 5, No. 1 (2014): 72-101.

<sup>22</sup> Sri Hariati, "Kawin Kontrak Menurut Agama Islam, Hukum dan Realita Dalam Masyarakat." *Jatiswara* 30, No. 1 (2017).



for the data, because the marriage of the contract is executed other than not reported, formal juridical is not set in any rules.<sup>23</sup> The position of the marriage contract in realizing a happy family is not in accordance with the QS. Ar-Ruum 30, 21, in which this verse explains that marriage should give birth to tranquility, whereas in contract marriage is not the case, as an obstacle to the government's progression, a happy family movement is no longer a movement in the effort of each family. But it has become a national movement involving government intervention. The family is said to be happy, calm, peaceful and peaceful if in the middle of the family is accomplished by a child.<sup>24</sup>

## **Legal and Social Implication of the Contract Marriage**

Marriages conducted between men and women result in a legal relationship between the two parties. Marriage as one of the legal institutions causes the position of men and women who unify jealously in marriage turned into husband and wife. According to the Act, this change brings consequences to the rights and obligations of both. According to the marriage law together husband and wife bear the noble obligation to uphold the household that becomes the basic joint of the society structure. In article 31 paragraph (2) UUP, each party is entitled to apply legal action. The husband protects his wife and provides everything with a home life in accordance with his abilities. The property during marriage becomes a common property. Similarly, the breakup of marriage due to divorce resulted in the mother or father nurturing and educating his children, based on the interests of the child. In contract marriages, there are consequences of permissive marriage that are impossible to do.

*First*, The absence of a living that must be fulfilled by the husband. *Second*, there is no inheritance mechanism between husband and wife. The

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<sup>23</sup> Muhammad Saleh Ridwan, "Perkawinan Mut'ah: Perspektif Hukum Islam Dan Hukum Nasional." *Jurnal Al-Qadau: Peradilan dan Hukum Keluarga Islam* 1, No. 1 (2014).

<sup>24</sup> Muhamad Ali, "Hukum Nikah Mut'ah dan Hubungannya dengan Pembentukan Keluarga Sakinah (Studi Keluarga Sakinah Model Kementerian Agama)." *Risâlah, Jurnal Pendidikan dan Studi Islam* 3, No. 1 (2016): 30-41.

marriage of a contract which does not meet the legal requirements of a marriage set forth in article 2 of the Marriage Law, and articles 5 and 6 of the compilation of Islamic law of contract marriage is not done or filed in front of the marriage registry officer, which implies the marriage does not have the power of the law because it is done outside study and supervision of the supervisor of the marriage recorder has no legal force and is considered illegitimate in the eyes of the law. Juridically, the legal consequences of not registering marriage are:

1. Marriage is considered invalid
2. The child has only a civil relationship with his mother.
3. Children and Mothers are not entitled to livelihoods and inheritance
4. The absence of legalization of marriage certificate
5. The child being born does not have a certificate
6. Do not get recognition from the state
7. The marriage has no legal protection.
8. The absence of joint property

A contract wife will not get her right as a wife in which the rights legally include:

1. The wife is not considered a legal wife
2. The wife is not entitled to the livelihood and inheritance of the husband if he dies
3. The wife is not entitled to the property in case of separation, because legally marriage, marriage contract is considered never happened.

The rights mentioned above will not be earned by the contract wife, due to marriage which has no legal certainty. A wife will not be able to sue anything against the husband, because it is restricted by contract or agreement that has been made and agreed upon. where the contract or agreement is very detrimental to the women. In addition to the impact on the wife, another effect of contract marriage is on the child who is born of the contractual abuses. Children born from marriages not authorized by birth of the child are also not noted to mean human rights violations. So is the child born of contractually contracted as an outsider who has no civil relationship with his father. The child has no right to get the inheritance from his father. In addition, children born of contract marriage also only get a good living in terms of maintenance and education, because the child only has a civil relationship with his mother.

While in formal juridical, the father who is his biological father is not responsible for providing for the child.

In addition to the juridical impact, contract marriage also has a sociological impact. The sociological and ideological impacts particularly experienced by contract marriage actors can be traced to the existence of changes to their social interactions and value systems. Social interaction is a dynamic social relationship involving relationships between individuals, groups per group of people as well as between individuals and groups of people.<sup>25</sup> Women (contract wives) married by foreign tourists rarely meet with their families, but their social interactions with families and surrounding communities are still running well. Some parents of contract married women know and let their children marry foreigners. However, there are also parents who do not know if their child is married to a stranger.

There are several important changes in their cultural value system. Some contracted married women have generally altered their cultural value system or at least accommodated their husband's cultural values, such as: efficient, disciplined, time-honored, undesirable privacy, speaking as necessary or reducing unnecessary chats, busy with work and tend to be suspicious to others. In short, contract wives have absorbed individualist and liberalist cultural values. In addition, the society's view of women (contract wives) also affects the psychological condition of the marriage contract perpetrator. The impact felt for the female actors is bigger that although the economic needs are met but they can not socialize with the environment. The public view is divided into two views where society A feels uneasy with the marriage of the contract while society B considers contract marriage no problem. Nevertheless, contract marriages are still very much caused by the consequences and unfavorable effects, both felt by contract marriage women, children born, and the impact felt by the surrounding community. Even after the contract is completed, the marriage contract man returns to his home country and does not return to Indonesia and does not take care of the child who was born from the marriage of the contract.

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<sup>25</sup> Oman Sukmana, *Sosiologi dan Politik Ekonomi*. (Malang: UMM, 2005).

## Conclusion

Marriage of contracts that occurred in several cities in Indonesia is already a tradition or habits of the people in the city, but the lack of understanding and lack of knowledge of the law applicable in Indonesia both seen from national marriage law and Islamic law make these women do marriage contracts that are strictly prohibited because the marriage is already illegal. The marriage of contract is not regulated in any law and rule of law, abik of civil law or Islamic law. In the civil law there are rules of rules concerning the legal requirements of his marriage. In Islamic law also prohibits the existence of contract marriage. because basically marriage is an inner bond between a man and a woman as a husband and wife with the aim of forming a happy and eternal family (household) based on the omnipotent complaints. Therefore, it is not permitted for a marriage that is only temporarily sperm like a marriage contract. in Islamic law Rasulullah prohibits the existence of contract marriage based on the hadits that is conveyed. In addition to not regulated in legislation, marriage also brings a negative impact on wives and children who were born from the marriage of the contract. some do feel disadvantaged, as this not only affects the negative image of society, but also the psychological impact that will be felt after the marriage contract ends. Children born of contract marriage illegitimate so that the child can not demand anything because if the marriage was over then the husband left and could no longer provide a living let alone inheritance to the married woman contract and her child.

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