

REVIEW ARTICLE

Contractual Marriage (*Nikah Mut'ah*): Comparing Islamic Law and Civil Law

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Abstract

A marriage contract is a temporary marriage in accordance with an agreed contract between the bride and groom and will end by itself if the contract is exhausted. Indonesia as a country that upholds religious values and norms of society is certainly very critical in determining the validity of a marriage. Marriage of contracts in Indonesia is difficult to record. Because the marriage of the contract is carried out in addition to not being recorded by formal judicial is not regulated in any regulation so it can be said that the marriage contract in Indonesia is not recognized and does not apply the law. Also, in Islamic law also does not allow the existence of contract marriage is based on the words of the Prophet SAW. The marriage of the contract also has many consequences to the wife and the offspring of the marriage of the contract

Keywords: *Contractual Marriage, Nikah Mut'ah, Islamic Law, Civil Law*

1. INTRODUCTION

Humans are created paired pair in accordance with the life partner that has been determined by the creator. Couples between women and men were created to shoot together. Life together between men and women terebut not always

related to matters of spiritual or biological needs, but also for the needs of the body also because people live in society (Afifi, 2014). Marriage is a mental bond between a man and a woman as husband and wife in order to form a happy and eternal family (household) based on the One Godhead.

As a birth bond, marriage is a legal relationship between a man and a woman to live together as a husband and wife. This birth bond is a formal relationship that is real, that is good for the mengatikan himself and for others or society. This birth bonding occurs with the marriage ceremony of the ceremony akad marriage for the religion of Islam. As an inner bond, marriage is a connection of the soul that exists because of the same willingness and sincerity between a man and a woman to live together as husband and wife. In the early stages, this inner bond is initiated and marked by the approval of the prospective bride to marry. Furthermore, in life together this mental birth bond is reflected from the existence of harmony husband and wife in question. The bonding of the birth and the bonds of the heart is the primary basis in shaping and fostering a happy and eternal family (Syahrani, 2006).

The practice of contract marriage can be found in Jepara (Central Java), East Java, Bogor Peak (West Java) and Singkawang (West Kalimantan) (Somad, 2010). Contract marriage in Islamic law is known as the term *mut'ah* marriage. In terminology marriage *mut'ah* is a marriage that is carried out solely to vent the passions and fun or marriage contract that a man does to a woman for a day, a week or a month (Mardani, 2011). This phenomenon lives in some parts of Indonesia, involving local men as brokers (looking for women who are willing to be married on a contract basis), and foreign men such as Middle Eastern men, as well as women. The procedure if the man from the Middle East as a bride has been matched with women who will be married in a cons, then the next marriage. The marriage presents the *penghulu* and also the witness, but the *bb* is the broker. That is, in the contract marriage that all the necessary

facilities such as location, guardian and witnesses have been prepared in such a way. The principals only agree on time and cost. After the "procession" of the marriage, the bride's parents sign a letter. The letter becomes an endorsement document for their status (Shafra, 2010).

In addition, considering the marriage of the contract has no legal force either according to Islamic law and Law No. 1 of 1974 about marriage, so that the marriage of the contract has no legal effect and is considered to never happen marriage. The position of the child of the contract marriage is deemed to have no nasab relationship with the father and the Family. Likewise, the position of the wife in the marriage of the contract, the wife cannot claim her rights during the marriage as the legal wife. Therefore, if any problems arising during the marriage can not be resolved in the religious court. In addition to the impact on the wife, the result of contract marriage is also felt by the child from the marriage of the contract. Because a child born of a m marriage contract is not recognized by law so as not to get the inheritance from his father.

2. METHOD

The type of research used is normative legal research. In this study focuses on research on legal principles and legislation related to contract marriage. Source of data in use is primary legal material, secondary law material as well as tertiary legal material. The primary legal materials used in this research are Civil Code, Law Number 1 Year 1974 About Marriage and Government Regulation Number 9 Year 1975 About Implementation of Law Number 1 Year 1974 About Marriage. Secondary legal material is any publication of law which is an unofficial document which provides an explanation of the primary legal material. Which consists of various books, journals, theses and theses related to law and related to contract marriage. Tertiary legal material is legal material that provides guidance or explanation of primary and secondary legal material is dictionary encyclopedia and

others. Research on contract marriage that is normative, that is using literature study method. The aim is to obtain a theoretical basis in the form of opinions or writings of experts, as well as to obtain information both in the form of formal provisions and data through existing scripts (Soemitro, 1994).

3. RESULT AND DISCUSSION

A. Occurrence of Contract Marriage Cases in Indonesia and their Negative Impacts

Marriage is a very important institution in society because it can legalize the legal relationship between a man and woman (Salim, 2002). 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 aspects, namely: Legal, Social and Worship (Mukhtar, 1993). 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 (Qalam, 2016). 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 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 (Marpiah, 2016). 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 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 (Handoyo, 2013).

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 (Isnaeni, 2016). 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, notabanya 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.

B. Legal Platform for Contract Marriage Based on Civil Law and Islamic Law

Legal Platform for 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) Skill

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.
- 5) A lawful cause these further four elements in the growing doctrine of law, are categorized into:
 - a. Two main elements relating to the subject (party) who entered into an agreement (subjective element)
 - b. 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 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 (Citra, 2016). 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.
- 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.

C. Legal Platform for 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 (Anshary MK, 2010). The purpose of marriage in Islam is to fulfill God's instructions in order to build a harmonious, prosperous and happy family. 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 sakinah, mawaddah and warrahmah need to implement perfectly in accordance with the validity of applicable law (Hidayatullah, 2014). 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 (Alhamdani, 1989).

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 haditss-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, 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 (Hariati, 2015). The marriage of these contracts is quantitatively difficult for the data, because the marriage of the contract is executed other than not reported, formal juridical is not set in any rules (Ridwan, 2020). 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 (Ali, 2016).

D. The resulting effect 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 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) 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 the 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 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 contractuality 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 (Sukmana, 2005). 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.

5. 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.

5. DECLARATION OF CONFLICTING INTERESTS

The authors state that is no potential conflict of interest in the research, authorship, and/or publication of this article.

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*I do not wish them
[women] to have power
over men; but over
themselves.*

Mary Wollstonecraft
A Vindication of the Rights of Woman