

Legal protection for contract marriage victims in Indonesia

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LEGAL PROTECTION FOR CONTRACT MARRIAGE VICTIMS IN INDONESIA

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ABSTRACT

Marriage is an inner bond between men and women to form a happy and harmonious family, which is carried out in accordance with the rules. In fact, not all marriages are conducted in accordance with applicable laws. Some marriages are carried out with the aim of deviating from regulations, such as temporary marriage contracts. Contract marriages are carried out in various ways. This method is one way to avoid adultery accusations in terms of religion. In terms of law, it is included in trafficking. The most disadvantaged party in this marriage are victims, who are usually women. Therefore, legal regulations are needed that specifically can prevent and minimize the occurrence of temporary marriages. The point is to protect victims, and punish perpetrators. This paper seeks to analyze descriptively the problems that arise related to temporary marriage and its impact on victims, the rules needed to ensnare violators of marriage contract law and forms of legal and social protection that are appropriate for victims.

Keywords: Human Rights, Trafficking, Contract Marriage, Legal Protection.

INTRODUCTION

In Indonesian law, marriage is regulated in various laws and regulations. Law No. 1 of 1974 concerning the Principles of Marriage regulates the terms and methods of marriage, among which marriage is intended to form a happy and eternal family based on the Supreme Godhead (Soewondo, 1977). Marriage is generally based on compassion to form a family based on the agreement of the two parties. To marry someone who has not reached the age of 21 years old must get permission from the parent/guardian. Marriage is only permitted if the man has reached the age of 19 years old and the woman has reached the age of 16 years old (Mulia, 2013). A person who is still married to another person cannot remarry unless they comply with Article 3 paragraph (2) and Article 4. For women whose marriages are broken, the waiting period is applied. The fact is that the marriage implementation finds many irregularities, with various modes such as coercion, fraud, or not in accordance with applicable law.

However, some cases found marriage as one of the modes of crime in trafficking. Human trafficking includes forced prostitution, forced marriage, slavery, and organ harvesting from donors who do not want to be called human trafficking (Garner, 2009). This term is used in illegal trade in human trafficking, which is often associated with slavery (Lusk & Lucas, 2009). One way to human trafficking is contract marriage, so the case is more complex and rampant, especially with the temporary marriage contract mode. Therefore, various efforts are needed for prevention, protection and handling (Lyneham & Richards, 2014). Legal protection for victims in unregistered marriage, including in contract marriage mode, that mostly are women can be done by referring to the perspective of the victim through a humanistic approach. Legally, it can be done through advocacy/legal assistance to obtain restitution/compensation, traumatic and psychological recovery, and socialization of

legislation and economic empowerment of the community. The practice of contract marriage is difficult to remove completely, because it cannot be denied that this practice has fans who are mostly male/foreign tourists who are on vacation or working in Indonesia. This situation is used by those who want to use it by facilitating it. It is common knowledge that the practice of contract marriage is carried out in several places in Indonesia which are famous in the tourist area of Puncak, Bogor-Cianjur, West Java. Although most were carried out secretly and unregistered, marriage contracts in this area were evident and widely known to the public. Some literature has clearly analyzed contract marriages in this region with satisfying sexual needs, which are usually carried out by Middle Eastern tourists. Arivia and Boangmanalu (2015) analyze sex, culture and religion in Contract-Marriage in Cisarua and Jakarta. Using projective techniques from halal sex tourism, Suhud & Willson, (2016) explores the effects of attitudes, subjective norms, and motivation on the intention of hosting young women to marry a Middle Eastern tourist.

METHODS

This article uses qualitative research methods. In accordance with the object of the study in this article, this type of research falls into the category of normative juridical research. Therefore, the data source of this article is secondary data, in the form of a mut'ah marriage report issued by the Cianjur District Religious Court. Cianjur Regency is one of the districts in West Java Province which has the highest rate of temporary marriage in West Java. The details are seen in Table 1.

The technique used for data analysis in this article is modeled with qualitative design referred to Huberman and Miles (2002). In this model qualitative analysis activities are carried out interactively and continuously until it feels sufficient. According to Nasution (1998), there are two stages in data analysis techniques in this library research. First, the analysis at the time of data collection is intended to better capture the essence or core of the research focus that will be carried out through sources collected and contained in the verbal formulation of language, this process is carried out aspect by aspect, in accordance with the research map. Second, after the data collection process has been carried out, then it is analyzed again after the data collected in the form of raw data must be determined by relations with each other.

Table 1 CASE FOR SUBMISSION OF MARRIAGE CERTIFICATE			
Year	Amount of Case Filing	Marriage After Law No. 1 of 1974	Marriage Before Act No. 1 of 1974
2015	793	696	97
2016	1607	1527	112
2017	1807	1692	195

Practice of Contract Marriage

The practice of contract marriage is considered a type of rent, because the purpose of this marriage is sexual pleasure of a man, and in return the woman as main victim gets a certain amount of money or property. The Indonesian Ulema Council (MUI) as the Islamic Islamic Preacher Organization, has issued a decree to be illegal in temporary contract marriages. Meanwhile, contract marriage victims are generally Indonesian children and women. This is caused by several factors, mainly due to economic factors and consumptive

lifestyles, so that victims seek shortcuts to meet their needs. The other dominant factor is due to the fact that the welfare of the community is not evenly distributed, both between the Indonesian provincial level, or the state. The potential for migration is also influenced by the potential and wealth of a country, especially in relation to social, political and economic problems. In general, migration activities are generally related to economic, political and social growth, especially changes in consumption patterns. Therefore it is necessary to take preventive measures which are social strategies because they need to have criminal policies whose purpose is to reduce crime and fulfill public justice (Nuraeny, 2011).

Contract marriage backgrounds vary, ranging from fraud, kidnapping, promiscuity, environmental influences, debt bondage, to a consumptive lifestyle. Likewise, contracting marriages are not only carried out by Indonesian citizens, but more foreigners, especially the Middle Eastern, and Koreans. Actors are generally men who work in Indonesia, or are on vacation in Indonesia (Suhud & Syabai, 2014; Suhud & Willson, 2016). In contract marriages many victims are women, and this activity has become a business object involving various parties, such as networks and practices of human trafficking. This is a social phenomenon that occurs in society, and is a shift in social and cultural values in society (Natsir & Natsir, 2017). Social construction in the legal dimension shows that temporary contract marriages actually sacrifice weak parties from women and children (Bedner & Van-Huis, 2010). In general, victims suffer physical, psychological, mental and social losses, need help and protection in a balanced and humane way (Nuraeny & Utami, 2016). This phenomenon is no longer a secret, even a matter of concern because not a few victims are underage and as students. Based on several factors that cause and the factors suffered by victims, the target of criminal law policy which was originally directed at criminal acts as crime prevention, shifts to the offender with the target of the perpetrator's treatment, and grows to be the victim of victims. Attention to victims, in accordance with current developments, so that criminal law abolishes the impression as if it only spoils the perpetrator rather than the victim.

Contract marriages generally seek sexual pleasure, while victims are trapped intentionally or not, because of persuasion and persuasion friends, neighbors and even close relatives to get material rewards in the form of money or goods that are considered luxurious. The practice of contract marriages is usually done secretly, in a hidden way, but people who know that contract marriage is passive, do not try to prevent it, because people also feel benefited from the economic side. Based on the results of a research conducted by the Religious Court's Chamber of Research and Development Center stated that in the marriage contract there is a price to be paid, the value ranges from tens of millions to hundreds of millions of rupiah. However, it is interesting, although many times it is bound by a temporary contract marriage agreement, but it does not have an impact on improving welfare. According to women as victims, the dowry that he produces is only enough to meet daily needs, and in the practice of marrying this contract, it is implied that the root of the problem is economic factors.

Impact of Contract Marriage for Victims

In fact, every human being has hope in accordance with human nature and the desire to always be a community, to live in peace and quiet. But this hope does not always run smoothly, because in the community there are still legal messages that have not been going well, there are still members of the public who disagree with their wishes, regardless of the common interests in the community. In the reality of people's lives, these rights are still found in several human rights violations. Human rights violations are any actions of a person or group of people including the state apparatus whether intentional or unintentional or negligence that illegally reduces, obstructs, limits and/or revokes the human rights of a

person or group of people guaranteed by law, and does not get or fear it will get a fair and just legal settlement based on the applicable legal mechanism. The implementation of contract marriages can have an impact, both for the perpetrators and victims, as well as for the general public. For principals who are generally male, the impact of contract marriage will not be felt directly. This is because sociological responsibility will be final after the contract is completed. Psychologically, the perpetrator will continue to remember the marriage partner contract, especially if during the marriage it will cause excitement and bring happiness. However, the memory will feel strange if during the contract marriage it is not found pleasure or happiness, especially if the impact is later discovered when contracting an infectious disease such as venereal disease. Meanwhile, for contract marriage victims, the impact experienced varies. Although there are some beneficial economic impacts, in cases where perpetrators during marriage indulge and give material or property gifts to meet every need for life and necessity, so far it can even share with family and other relatives, but the negative effects also apply, for temporary marriage is because of coercion, threat or kidnapping, then the victim will experience a prolonged traumatic.

There are many obstacles experienced by the government apparatus concerned to resolve temporary contract marriage issues. The police claimed to have difficulties in enforcing contract lawsuits, the practice of contract marriages is usually done privately, in contrast to the practice of prostitution in general. The perpetrators are mostly foreigners, whose access to Indonesia is often not recorded. Integrated law enforcement is needed to dismantle it. Contract marriage practices also risk increasing the potential for the spread of sexually transmitted diseases. Therefore, in areas where contract marriages are used, special attention needs to be given to improving access to health, especially those related to the health of the female reproductive organs, as well as the prevention and control of sexually transmitted diseases. The practice of contract marriage does not only affect the circle of perpetrators and the surrounding community, but often results in the birth of offspring of a marriage contract. By law, the position of a child born from a contract marriage is very weak. Socially, community acceptance of the presence of mixed children between male foreign nationals and most Indonesian women in residential areas where contracting is married is also important to note. The government is deemed necessary to create a program that specifically provides protection to children born from marriage contracts.

Another impact is the difference in understanding between cultural values and views from both sides of the religious values adopted. In the eyes of the Arabs, marrying a contract is better than committing adultery. Meanwhile, people in Indonesia, consider marriage contracts as a form of adultery or trafficked marriage. This is due to the standards adopted by most Indonesians which are Islamic teachings, and consequently, all provisions relating to the value of marriage will be returned to Islamic teachings.

Legal Protection Efforts for Victims of Contract Marriage

Legal protection in the context of criminal law is part of crime prevention, which is basically a part of law enforcement efforts, or part of law enforcement policy. Law Enforcement Policy is basically an integral part of social defense efforts. Thus the policy/politics of criminal law is an integral part of social or political policy (Arief, 2008). Social policy is a rational effort to achieve the welfare of society and at the same time to protect society. So in the sense of social policy, it also includes social welfare policies and social defense policies.

Determination of whether the action enters the law or cannot be determined by the government through wise regulation, taking into account the feelings or values that live in society. This can be done by the government through institutions in the country, where

institutions must be able to implement the rules that have been made consistently and decisively. To be able to enforce the rules consistently and firmly, he must be given sharper sanctions than other legal sanctions. Efforts by the government in law enforcement efforts aimed at protecting and prospering the people are related to trust, and justice, which can be done through the balance of the application of criminal sanctions through punitive and non-criminal means (Iman, 2018). In practice, the imposition of criminal sanctions in the form of criminal and/or non-criminal has work restrictions, each of which has positive and negative sides.

Rational efforts to deal with crime (including contract marriages) are not only sufficient to use criminal law facilities, but can also use facilities outside criminal law. According to Sudarto (1997), non-criminal applications oriented to social policy are criminalization in criminal law, taking into account some considerations such as that the use of criminal law must pay attention to national development goals, namely to create a just and prosperous society that is equally material and spiritual based on social norms. In this connection, the use of criminal law aims to overcome crime and carry out awareness of countermeasures, for the welfare and protection of the community. Actions that try to be prevented or overcome by criminal law must be an 'undesirable action', which is an act of bringing material and/or spiritual harm to citizens. The use of criminal law must also pay attention to the principle of cost benefit, and the use of criminal law must also consider the capacity or ability of labor law enforcement agencies, namely that there should be no overbearing.

The urgency of protection for victims of Marriage Contracts is a consequence of Article 1 paragraph (3) of the 1945 Constitution which states that Indonesia is a legal state. With its existence as a legal state (*rechtstaat*) there are various consequences attached to it. Van-Boven (1993) by referring to the Declaration of Basic Principles of Justice for victims of crime and abuse of power, states that what is meant by victims is that individuals and groups have suffered losses, including physical or mental injury, emotional suffering, economic loss or deprivation of rights - their basic rights, either by action or by negligence. The draft Declaration and Resolution of the 7th United Nations Congress which later became UN Resolution 40/34 40/34, formulated victims as individuals, individually or collectively, suffered losses due to actions that did not violate the criminal law applicable in a country, including regulations prohibit abuse of power (High Commissioner for Human Rights, 2002).

Various approaches can be taken to protect victims of contract marriages, including access to justice and fair treatment (going to court and fair treatment); payment of compensation by the perpetrator of a crime to the victim, his family or another person formulated in the form of a criminal sanction in the law; if the defendant is unable, the state is expected to pay financial compensation to the victim, his family or those who are the responsibility of the victim. As well as material, medical, psychological and social assistance to victims, whether through the state, volunteers, or the community assistance. The meaning of protection of contracted marriage victims, besides providing legal protection so as not to become victims of crime again which means protection of human rights or legal interests of victims, as well as protection for obtaining guarantees/compensation for victims' suffering/losses or identical to victim compensation sponsors, restitution and rehabilitation. Passive legal protection for married victims of contracts can be pursued by actions outside the criminal justice system, which provide recognition and guarantees in the form of regulations or policies relating to victims' rights. While active legal protection can be an action related to the fulfillment of rights. Claims can be filed in addition to the perpetrators in the form of rights granted by the perpetrators, which must be received by the victim in connection with the application of legal rules or government policies. Victims in contract marriages are difficult to know, this is because victims rarely report or do not even feel victims, because

3 they feel they benefit from the economic side. But after passing, the victim is aware, especially if the marriage has an impact.

DISCUSSION

The legal arrangement of victims has been clearly defined, but in reality the implementation cannot be enjoyed by victims. Victims who have to get the rights, but instead experience increasingly increased losses, which not only do not get the rights they should receive, but also other losses when handling compensation caused by other elements who also take advantage of these conditions. victim. This situation will increase if Trafficking in Persons of Persons is unknown or not found, because the sponsoring agent often moves and does not tell the victim or his family about a clear identity and address, or if the perpetrator is caught in a thousand reasons. free from the burden of restitution costs to victims. This situation should not be experienced by victims, especially in Article 50 of Law No. 21 of 2007, clearly regulates the process of compensation/rehabilitation. Thus the regulation, not only prioritizes the security and order of the state and society, but there is a balance between the interests of the people, the position of the perpetrators and victims get the same attention and arrangements. The perpetrator is punished in the form of crime and action, while the victim is protected. The application of equality of positions in law is a consequence of respect and protection of human rights. This idea is in line with the concept of potential victims and actual victims, namely balance.

CONCLUSION

In addition, the application of legal regulations is to impose sanctions for officials who abuse their position and authority in making policies. The application of these sanctions is a manifestation that everyone has the same legal standing before the law if they violate the law. Handling and settlement is not enough just by giving counseling and socialization about the prohibition of contract marriage. Government officials authorized to settle contract marriage cases are Religious Court Judges because they are often found in marital law marriages by means of contract marriages, Bogor Regency Government and Cianjur Regency, Village Heads who are often used as a place for transactions. from a marriage contract, the police who conduct operations to uncover contract marriage modes, to law enforcement officials who dismantle the villas are often used as the location of the marriage contract. Law enforcement is difficult because there are still weaknesses in regulation. For example, the Marriage Law and its derivative rules do not stipulate sanctions for punishing contract marriages. Legal actions can only be made to intermediaries or liaisons that facilitate the practice of contract marriages, which are prosecuted with Article 296 and Article 506 of the Criminal Code which regulates the crime of prostitution. The practice of marrying this contract can also be prosecuted under Law No. 21 of 2007 concerning the Eradication of Crimes against Trafficking in Persons, Law No. 23 of 2002 concerning Child Protection when the marriage practice of this contract involves minors. In addition to national regulations, regional regulations that specifically regulate the practice of contract marriage as a covert prostitution business are needed. However, in the area of contract marriage practices such as Bogor and Cianjur regencies, there are no regional regulations that specifically regulate the practice of contract marriages.

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