

Legal Analysis and Morality of Contractual Marriage in Indonesia: Perspective of Legality and Responsibilities

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Abstract. Contractual marriage is a phenomenon that has attracted attention in the context of marriage law in Indonesia. This term refers to an agreement between two parties to marry with certain conditions set at the beginning of the marriage. Although not specifically regulated in the Compilation of Islamic Law or national marriage law. In terms of legality, the existence of contractual marriage raises debate about compliance with ethical values and social norms that apply in Indonesian society. The research method with a conceptual approach, as described in this article, uses primary, secondary and tertiary sources to analyze the legal impact and morality of contractual marriage. In this context, it is important to consider legal responsibility and its overall impact. This article seeks to provide a comprehensive understanding of the legal and moral challenges faced by contractual marriages in Indonesia and considers their impact on societal values and the institution of marriage.

Keywords: Contractual marriage, Morality, Perspective of Legality, Responsibilities

1 Introduction

Marriage is a fundamental institution in social life that not only binds two individuals emotionally but also creates various legal and moral responsibilities. Marriage can be viewed from three aspects: legal, social, and religious. From a legal perspective, marriage is classified as an agreement between the parties involved, while from a social aspect, it can be understood as a manifestation of social relationships. In addition, through this legitimate marital relationship, it can also serve as a means to gain social recognition and eliminate negative stigma in society, as there is a tendency in society to associate the existence of marital status with negative connotations. On the religious side, this legitimate marriage also embodies the values contained within the faith.[1]

Law Number 1 of 1974 on Marriage and Law Number 16 of 2019 on Amendments to

Law Number 1 of 1974 on Marriage (hereinafter referred to as the Marriage Law) is a set of regulations that governs all marriage practices in Indonesia. Article 1 of the Marriage Law states the definition of marriage, which is a spiritual and physical bond between a man and a woman as husband and wife, aimed at forming a happy and lasting family (household) based on the belief in the One and Only God. This definition was crafted by the lawmakers to establish an official understanding of marriage. This is expected to help the community understand the core meaning of marriage, as well as provide clear guidance on what is meant by the marital bond in a legal and social context. This law contains several important elements, including the spiritual and physical bond between a husband and wife, the purpose of marriage is to form an eternal family, and it is based on the first principle of Pancasila, which is "Belief in One God." The presence of this law is intended to establish clear legal standards to determine whether a marriage conducted is valid or not according to the applicable positive law. In addition, there is protection of individual rights and legal accountability related to it.

Time continues to evolve, and one of the aspects that has developed is the practice of marriage, leading to the emergence of social phenomena, including Contract Marriages. Contract marriages are a phenomenon that has garnered attention in Indonesia, particularly due to the various legal, social, and moral aspects surrounding it. In recent years, this practice has sparked much debate among academics, legal practitioners, and the general public. The definition of "contract" as stated in the Civil Code Article 1313 is "an act by which one or more parties bind themselves to one or more persons." It can be concluded that a contract is an action taken by individuals based on an agreement. In Islam, contract marriage, or what is known as *mut'ah* marriage, is defined as a marriage for the purpose of pleasure. According to the Shia school of thought, *mut'ah* marriage is a marriage that lasts for a specific period of time, and after that period ends, the marital bond is considered to be over. Meanwhile, the Sunni school views *mut'ah* marriage as invalid and prohibited, as it is not conducted in the presence of a guardian and witnesses. This is considered close to the act of adultery and can even be categorized as a form of prostitution due to the financial elements associated with the purpose of the marriage. Thus, a Contract Marriage is a form of agreement. Contract marriage is a temporary or provisional marriage because it has a specific duration as an agreement; generally, this type of marriage occurs when there is a mutual agreement or understanding between both parties. The practice of contract marriage is contrary to the prevailing laws, religious beliefs, and so on. However, it is still possible that there are many individuals who are engaging in that social phenomenon.

The phenomenon of contract marriages invites debate because it does not align with the concept of marriage as outlined in the Marriage Law in Indonesia. From a moral perspective, contract marriage also raises many controversies. The Indonesian society, which is predominantly Muslim, views marriage as a sacred act of worship that must uphold its values of purity. Contract marriages are considered to tarnish the sacred meaning of marriage, as they turn it into a temporary transaction that benefits one or both parties materially. This also has the potential to undermine the dignity of women, who in many cases become the parties affected, both emotionally, socially, and legally. In some cases, women involved in contract marriages experience exploitation, as these marriages are often not officially recognized by the state, thus

failing to provide legal rights guarantees for the parties involved, especially regarding inheritance rights, child rights, and spousal responsibilities. Contract marriages in Indonesia do not yet have a clear legal basis and are not recognized by law. Although some circles consider contract marriages as part of certain traditions that must be respected, Indonesian law does not grant legality to forms of marriage that do not meet formal requirements, such as official registration at the civil registry office or the Office of Religious Affairs (*KUA/Kantor Urusan Agama*). As a result, contract marriages are considered an illegal practice and contrary to the applicable laws. This poses a challenge for law enforcement, especially regarding the protection of the rights of women and children born from such marriages.

Social phenomena are influenced by various factors, one of which is low education, leading to a lack of awareness regarding what is permissible and what is not, as well as what is legal and illegal according to positive law. Often influenced by the habits and culture of the local community, areas that have not been exposed to cultural developments, and that remain strongly tied to the culture and customs of the local region. In addition, poverty is one of the biggest contributing factors to the emergence and continuation of this contract marriage practice.

This needs to be a concern for society, so through this research, we, the authors, have titled it "Legal Analysis and Morality of Contractual Marriage in Indonesia: Perspective of Legality and Responsibilities" to examine the aspects of legality and morality and how accountability is addressed in the practice of contractual marriage. Formulation of The Problem : What is the legality of Contract Marriage according to marriage law and What is the legal accountability for the parties involved in a Contract Marriage.

2 Methods

The author employs a normative research method that is qualitative in nature with a conceptual approach. Normative research is a type of legal research methodology that employs a doctrinal approach that is normative in nature, with analysis based on relevant and applicable regulations in accordance with the issues raised.[5] Comparison and regulations in this research. The author analyzes opinions and legal writings to later review and gain an understanding and conclusions about the aspects of legality, morality, and legal accountability in the practice of contract marriage.

In accordance with the title of the article, the author employs a conceptual approach, comparative analysis, and legislation to understand the principles used as the foundation for the creation of laws and the practice of contract marriage in Indonesia. This research utilizes relevant primary, secondary, and tertiary legal sources related to the topic of discussion, which includes journals, written works, articles, theses, books, the Indonesian language dictionary, and legal dictionaries, by gathering information related to keywords associated with Contract Marriage.

3 Results and Discussion

The Legality of Contract Marriages According to Marriage Law Indonesian law considers marriage as a contract, as stated in Article 26 of the Civil Code, where the will of both parties serves as the main foundation of the marriage. Socially and culturally, marriage is also seen as a union of two families, so the immediate family and extended family are involved in the decision-making process.

Marriage in Indonesia encompasses legal, socio-cultural, and religious dimensions. While the Civil Code defines marriage as a contract, marriage law expands this concept by incorporating religious aspects and the aim of a higher quality of life. [6].

Marriage is one of the main foundations in social life that serves to regulate households and offspring. In Indonesia, the legal basis for marriage is regulated by the Marriage Law. Basically, marriage aims to create a happy family both physically and spiritually. This happiness will not be achieved if marriage is only seen as the fulfillment of biological needs or merely as a means to prolong lineage. The value of marriage will be created if it fulfills three main elements: physical, emotional, and spiritual. Contract marriage, known in Arabic as *Mut'ah*, is a temporary marriage in which a man marries a woman in exchange for certain material compensation for an agreed-upon period of time. When that time ends, the marriage automatically concludes without any divorce or obligation to provide support. If one of the partners dies before the end of the marriage contract, no inheritance rights are granted. Contract marriage is included in the type of marriage that is unbalanced because it is solely based on worldly desires and does not fulfill the three main aspects of marriage.[7]

From a legal standpoint, a contractual marriage does not align with Indonesian marriage law. Article 1 of the Marriage Law states that marriage is a spiritual and physical bond between a man and a woman as husband and wife, with the aim of forming a happy and lasting family (household) based on the One and Only God. [8] In terms of terminology, the word "eternal" in the definition of marriage according to the law is defined in the Fifth Edition of the Great Dictionary of the Indonesian Language (*KBBI/Kamus Besar Bahasa Indonesia*) as remaining (unchanged, unshifted, and so on) forever; everlasting; sustainable.[9] Therefore, a marriage that is legally valid according to positive law is ideally one that lasts indefinitely. In the practice of contract marriage, the addition of the word "contract" in this case, terminologically alters the definition of marriage as stated in the Marriage Law itself. The word "contract" according to the Great Dictionary of the Indonesian Language (*KBBI/Kamus Besar Bahasa Indonesia*) Edition V means a legally binding agreement between two or more parties to carry out or refrain from carrying out activities. The explanation of the provisions for carrying out or not carrying out the activities is closely related to specific locus and tempus as well. Thus, a contract marriage can be defined as a marriage that occurs based on purposes other than forming a family (household), which tends to include specific conditions and a certain time frame. Therefore, based on that definition, it is clear that a contractual marriage is an action that is not in accordance with the Marriage Law.

Article 2 paragraph (1) of the Marriage Law states that marriage is considered valid if

conducted according to the religious laws and beliefs of each party. Regarding agreements in marriage, the Marriage Law has indeed regulated this in Article 29. However, in paragraph (2) of Article 29, it is clearly stated that a marriage agreement cannot be validated if it violates the boundaries of law, religion, and morality.

Not only is it clear that it violates legal boundaries by deviating from the definition of marriage in the applicable laws, but in practice, contract marriages are often associated with violations of morality. One example of this phenomenon is occurring in the Cisarua District of West Java, where contract marriages take place between Arab men and indigenous women during the three months that the Arab men are vacationing in Cisarua.[11] This process is carried out through intermediaries in the form of a "team" similar to a broker or matchmaker. (biong). In its development, the practice of contract marriage in Cisarua has occurred continuously, thus systematically becoming a specific event of human trafficking, particularly the trafficking of women. (woman trafficking).

This phenomenon can be described like an iceberg, where only a small part is visible on the surface, while the majority of the problem is hidden beneath it. West Java Province is recorded as the region with the highest number of human trafficking victims in Indonesia. Several areas that have become the focus in this case include Indramayu, Bandung, Sukabumi, and Cisarua. There, women are often positioned as objects of trade and are exploited both sexually and economically.

Factors such as poverty, low education levels, and local culture also contribute to the high rates of women's trafficking. Women become commodities that are traded due to pressing economic situations and a lack of educational opportunities. In addition, the process of recruiting victims is often carried out through interpersonal communication approaches, whether by family members, partners, or boyfriends. Recruiters exploit personal relationships to lure potential victims into the trap of human trafficking.

Therefore, there is a need for more intensive and continuous socialization efforts to the community, especially regarding contract marriages that often become part of human trafficking. The socialization must be carried out from various perspectives, including legal, religious, and social aspects. We must not allow economic needs and materialistic desires to drive individuals to violate legal norms, undermine the sanctity of marriage institutions, and disrupt the existing social order.

Although the community in Cisarua District, West Java, is known as a religious and devout society, they still engage in the practice of contract marriage. Indeed, contract marriages clearly contradict Islamic teachings, violate the Marriage Law, and are viewed unfavorably by the general public. This indicates a gap between religious beliefs and the socio-economic realities faced by society, leading them to feel compelled to take actions that are inconsistent with religious norms and applicable laws.

Thus, a contract marriage is not considered a legitimate marriage because it is not conducted with the noble intention of obeying God's commands and forming a happy family, but rather based on interests that do not align with marriage laws. In addition, marriage law requires that every marriage be registered in accordance with the applicable laws and regulations, as stipulated in Article 2 paragraph (2) of the Marriage Law.

Contract marriages are usually conducted secretly and are not recorded according to the applicable regulations, so many people are unaware of them. Contract marriage actors often consider their marriage valid according to religious standards simply because they meet requirements such as having a prospective bride and groom, parental consent, a marriage officiant, and a dowry, even if it is not officially registered. That certainly violates Article 2 paragraph (2) of the Marriage Law.

Positive law in Indonesia currently does not have clear regulations prohibiting contract marriages, although when examined based on the Marriage Law that governs how marriages are recognized by the state, the concept of contract marriage does not align with those rules. This certainly represents a legal vacuum as it still provides a loophole for people to engage in contract marriages. Therefore, a legally binding clarity regarding the prohibition of contract marriages is very much needed.

The prohibition of contract marriages by state law is not intended to obstruct human rights to marry, but rather to ensure that community life is orderly, unselfish, and in accordance with the values of propriety and justice. The negative impact of contract marriages is very complex, harmful to the parties involved, and tarnishes social norms. For the perpetrators, whether they realize it or not, they have wronged themselves and are unaware that such marriages can harm themselves, their families, and the idealistic values present in society.

Knowing that the practice of contract marriage still occurs in Indonesia, even though it has been implicitly declared prohibited in several laws, clearer legal regulations are needed to address this issue. By explicitly regulating the prohibition of contract marriage practices, it will provide legal clarity, including facilitating the reporting process for victims and imposing sanctions on the perpetrators.

Legal accountability for parties involved in contract marriages.

Several studies assess the phenomenon of contract marriage as leading to covert prostitution due to the failure to meet the requirements and pillars of marriage, both in terms of religious principles and legal regulations.

In addition, if we examine the validity requirements of an agreement according to the Civil Code as outlined in Article 1320, which includes:

- a. Those who commit themselves agree;
- b. The ability to create an agreement;
- c. A certain thing;
- d. A legitimate reason.

Paragraphs 1 and 2 are subjective conditions, and if they are not met, a contract or agreement can be canceled. Meanwhile, paragraphs 3 and 4 are objective conditions, and if they are not met, a contract or agreement will be null and void by law. Seeing the practice of contract marriages that do not align with the purpose of marriage as defined by law, it is very clear that the objective requirements for the validity of an agreement according to the Civil Code are not

met. Furthermore, Article 1332 of the Civil Code also states that only goods that can be traded may be the subject of agreements, whereas marriage does not fall into this category.

The reality of marriage in Indonesia does not always proceed smoothly; marriage practices often deviate from the applicable laws. This is due to the fact that legitimate marriages, as regulated by Indonesian positive law, do not recognize the concept of contract marriages/*mut'ah*, leading to the perception that marriages not based on the stipulated regulations are considered invalid. Some research findings assess that the phenomenon of contract marriages leads to covert prostitution due to the failure to meet the requirements and pillars of marriage, both in terms of religion and legal regulations.

The practice of contract marriage in Indonesia often does not align with various applicable legal aspects. Indonesian positive law does not recognize the term contract marriage or *mut'ah* marriage, so marriages that do not comply with the regulations are considered invalid. As a result, those who engage in contract marriages can be held legally accountable from various aspects.

In terms of criminal law, criminal law plays a role in upholding justice and protecting victims. If contract marriage practices contain criminal elements such as adultery, fraud, or exploitation, the perpetrators may be subject to sanctions in accordance with the Criminal Code. For example, the perpetrators could be charged under the adultery or exploitation of minors provisions (Law No. 23 of 2002 on Child Protection), fraud (Article 378 of the Criminal Code), or human trafficking. (UU No. 21 Tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan Orang). Criminal liability can also be imposed on parents or guardians who exploit this marriage for financial gain.

In the realm of civil law, victims of prenuptial agreements can file a lawsuit to seek compensation for both material and immaterial losses. Contract marriages do not provide legal status to the wife and children, which means they do not have inheritance rights or other civil rights. Based on Article 2 paragraph (1) of the Marriage Law, a marriage is only considered valid if it is conducted in accordance with religious law and registered. In addition, Article 43 paragraph (1) states that a child born from an unlawful marriage only has a civil relationship with their mother, not with their father. This is reinforced by the Compilation of Islamic Law (KHI/*Kompilasi Hukum Islam*), which stipulates that marriages without the intention of establishing a lasting household, such as temporary marriages, are considered invalid and do not grant civil rights to the parties involved.

From an administrative perspective, every marriage in Indonesia must be registered by the state to be legally valid. Article 2 paragraph (2) of the Marriage Law requires the registration of marriages, which is conducted at the Office of Religious Affairs (KUA) for Muslims or at the Civil Registry Office for other religions. Contract marriages do not meet the registration requirements because they are not permanent, and therefore are not recognized by the state. Public officials involved in the registration of illegal marriages may face administrative sanctions, including warnings or dismissal.

In addition to legal accountability, there are also social sanctions awaiting those who engage in contract marriages. Violations of these moral norms can lead to stigma and rejection from the local community. Violations of social ethics and community norms often result in

equally severe consequences, such as ostracism and the negative perceptions that persist towards both the perpetrator and their family. [12]

The issue of contract marriage raised in this research is considered inconsistent with the moral values that exist and prevail in society. Here is an explanation regarding the issue of contract marriage in relation to the moral and religious values present in society. The term "moral" itself comes from Latin, meaning custom or habit. Poespoprodjo states that morality is the quality of human actions, indicating whether they are good or bad, right or wrong, and so on. Morality can be divided into two: religious morality, which is based on religious teachings and values, and secular morality, which is worldly in nature. Indonesia is well-known for its strong religious and social values, so it is not uncommon for matters related to ethics and morality to be associated with the culture and beliefs of the local community. [13]

Examining the context of contract marriage morality in Indonesia itself, it is far from aligning with the moral values held by society and the religions believed in by the community. Looking from a religious perspective. First, from the perspective of Islam, marriage according to Islamic teachings is a binding contract or agreement between a man and a woman, accompanied by willingness, love, tranquility, and conducted in a manner permitted by Allah SWT. Therefore, contract marriages are prohibited and not legally valid due to the failure to meet the requirements of marriage law. Islamic law clearly regulates and explains that *mut'ah* or contract marriage is forbidden. [14]

Secondly, from the perspective of Christianity, marriage is regarded as a lifelong union between a man and a woman who are in love. It is also written in the Bible in Matthew 19:6, "Therefore, what God has joined together, let no one separate." Marriage from the perspective of Christianity is considered sacred and can only be undertaken once in a lifetime, so the term contract marriage is not seen as an option, reflecting back on the understanding and principles of marriage.

Next, the third perspective is from Hinduism. In Hinduism, contract marriages are not in accordance with religious teachings. This can be seen from the verses in Hindu scriptures. Among them is the verse from the *Rgveda*: X.85.36, which contains the purpose of marriage, namely to unite as a family to achieve happiness together with one's partner, with God as the protector and witness of the marriage. Therefore, it can be concluded that marriage is about forming a happy and eternal family, making the practice of contract marriage inconsistent with Hindu teachings.

In general, contract marriages are not in line with the principles, values, and morals taught by these three major religions. All three religions reject and do not recognize the existence of contract marriage practices, as they do not fulfill the fundamental essence of marriage according to their teachings.

4 Conclusion

Contract marriages or *mut'ah* marriages in Indonesia are not legally recognized because they do not comply with the Marriage Law, which defines marriage as a physical and spiritual

bond to form a lasting family based on the belief in the One and Only God. Contract marriages, based on agreements and for a specific duration, are considered to violate religious norms, laws, and morality. This practice is often associated with legal violations such as human trafficking. Therefore, stricter legal regulations are needed to prohibit and prevent contract marriages in Indonesia. Legal accountability for parties involved in contract marriages in Indonesia can be imposed from various aspects, including criminal, civil, and administrative. The practice of contract marriage not only violates the Marriage Law but can also be considered a form of veiled prostitution or exploitation, which infringes upon the Criminal Code and other laws such as the Child Protection Law and the Law on the Eradication of Human Trafficking. Perpetrators may face criminal penalties such as fraud, adultery, or exploitation, while victims can seek civil compensation. In addition, the recording of an unlawful contract marriage can result in administrative sanctions for the officials involved. This practice also creates a heavy social stigma for those who engage in it. Contract marriages are considered incompatible with the moral and religious values upheld in Indonesian society. The morality of contract marriage does not meet the principles of the major religions in Indonesia, namely Islam, Christianity, and Hinduism, which emphasize the importance of purity, permanence, and noble purposes in marriage. Overall, the practice of contract marriage is contrary to the fundamental essence and moral values of marriage according to the teachings of these religions.

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Regulations

Law Number 23 of 2002 on Child Protection

Article 378 of the Penal Code

Law Number 21 of 2007 on the Eradication of Human Trafficking Crimes Law Number 1 of 1974 concerning Marriage

Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 on Marriage. Compilation of Islamic Law Article 5, Paragraph 1

Article 1320 of the Civil Code

Article 1322 of the Civil Code

Article 26 of the Civil Code

Holy Bible

Matthew 19: 6

Rgveda: X.85.36