

**LEGAL REVIEW ON THE LEGALITY OF MARRIAGE
CONTRACT REVIEWED FROM LAW NUMBER 1 YEAR
1974 AND ISLAMIC LAW IN MEDAN CITY****Nurul Aisyah**

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ABSTRACT

In fact marriage is a sacredness intended for a long time until death separates, but in practice often people who perform a temporary marriage called contract marriage. Given the importance of the issue of marriage, the intricacies regarding marriage have been regulated in such a way both in state law, religion and societal norms. Indonesia as a country that upholds religious values and societal norms is certainly very critical in determining the validity of a marriage. It is stated in the Law No. 1 of 1974 and Government Regulation No. 9 of 1975, the implementation of marriage is an important momentum and must be preserved, then in addition to marriage must be carried out in accordance with each religion and belief, marriage should be recorded, as stipulated in Article 2 of Law No. 1 of 1974 paragraph (1). But even though there are rules regarding the law and conditions of marriage both religiously and governmentally, there are still individuals who perform marriages that are not in accordance with these conditions. One form of marriage that is not in accordance with the terms and laws that apply is contract marriage. With the absence and non-legality in marriage contracts that occur in many communities that are limited only by time and that are contrary to the prevailing legal norms.

Keywords: Marriage, Marriage Contract, Legal Arrangements, Legality.

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INTRODUCTION

Contract mating is also called temporary mating or intermittent mating. The importance of contract marriage is simply the desire to obtain pleasure from their spouses without the intention of perpetuating offspring and continuing the marriage and putting aside other important purposes of a marriage. Contract marriage has no purpose to form an eternal, eternal, *sakinah, mawwadah warahmah* household and that is contrary to the purpose of marriage prescribed in Islam. Marriage contracts that have to the culprit itself makes an agreement in it then the provisions of Article 1320 civil code is not fulfilled. In contract marriage there is also a marriage agreement. Manun marriage agreement in marriage contract is very contrary to the marriage agreement in Law No. 1 of 1974. According to Law No. 1 of 1974, marriage agreements are allowed as long as they do not violate the limits of law, religion, and decency. The marriage agreement in marriage is contrary to the limits of law, religion and decency. Because the content of the marriage agreement in the marriage contract governs the period / length of marriage, the reward to be obtained by one party, the rights and obligations of each party, and others. From the content of the marriage agreement, it causes the marriage contract to be a temporary marriage because the time is limited, and greatly accentuates the economic value, so it is very contrary to the

laws, religions, and norms of decency prevailing in society.¹

The marriage period will end with the period of agreement agreed by both parties with no divorce and no obligation for a person to inherit between the two legally. The terms of marriage contract include doing *ijab qabul* the words marriage or with a temporary word, the existence of dowry, without guardians, without witnesses, there are provisions limited by time, between husband and wife and no divorce. Although contract marriage has *Kabul ijab* on regular marriages. The difference lies in the restriction of the time of marriage carried out.

While for Indonesians, especially women who are women involved in the marriage contract, they do it for economic reasons. Financial problems are the main reason for the marriage contract. Because in marriage the price set is quite high. The longer the time, the more expensive and high the rate. This method is considered better than committing adultery, because marriage is permissible for the husband and wife relationship.

In contract marriage the procedure is not convoluted unlike in a permanent marriage. The cost is also cheap, because the perpetrator is not too burdened to have to hold a wedding reception as is common in permanent marriages. The period of marriage is not permanent, can be arranged together even in the specified by the man, depending on how long he needs it. Similarly, the

¹ Yusuf ad-duraiswisy, *Nikah Siri, Mut'ah Dan Kontrak Dalam Timbangan Alqur'an Dan As-Sunnah*, cetakan pertama, (Jakarta: jurnadatsamiah, 2010), p 146.

social burden of having to visit regularly or be friendly to the wife's family does not exist. The complicated administration of population ranging from RT, RW, village, to sub-district will not be experienced by contract marriage actors.

METHOD

Research is used in normative legal research. In this study is focused on research on the principles of law and legislation related to contract marriage and the nature of qualitative research data analysis is the decomposition of what is happening phenomenon, (*descriptive*), where the purpose of this analysis to decipher the facts, based on the data, the process of analysis of this research is conducted starting from reading, studying, and studying the data using data collection measures, data reduction (unnecessary disposal), word presentation, and withdrawal of conclusions (*verification*).²

DISCUSSION

Pancasila as the philosophy of life of the nation which is also the source of all legal sources has high-dimensional values and is in accordance with the values that live in society, because Pancasila is also a national character that can distinguish Indonesian people from other nations so that Pancasila also becomes a reference against various rules which are then followed by the

² Ronny Hanitijo Soemitri, *Metodologi Penelitian Hukum*, (Jakarta: Ghalia, 1994), p. 28.

constitution and various other organic regulations. The 5th precept "Social justice for all Indonesians", if interpreted, can be a fundamental foundation for the existence of rights and obligations between regional heads who provide LKPJ to the DPRD to achieve justice for the people at the regional level in upholding transparency and accountability towards the implementation of regional government.³

Children born outside of legal marriages are now able to breathe freely, because on Friday 17 February 2012 the Constitutional Court again made a revolutionary decision.⁴ Marriage is a complete covenant of a person as a human being, not only because of the physical, spiritual, or intelligence (intellect) dimension alone, until the contract of the transaction expires and the woman in question is considered eligible to bear children.

Clarify human needs as follows:

1. The physiological needs, i.e. physiological needs.

³ Cynthia Hadita, Regional Autonomy Political Politics Of Regional Liability Reports To Regional Representatives In The Implementation Of Local Government, *Nomoi Law Review*, Volume 1, Issue 1, May 2020, p. 91.

⁴Eka N.A.M. Sihombing, Kedudukan Anak Luar Nikah Pasca Putusan MK Nomor 46/PUU-VIII/2010, *accessed on sumut.kemenkumham.go.id* (10 June 2020).

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2. The safety needs, the needs related to the sense of security.
3. The belongingness and laves needs after the needs of safety needs are relatively met, then comes this fourth need, namely the need for individuals to connect socially with others.
4. The esteem needs, i.e. the needs related to the award, including self-esteem, and the sense of want to be appreciated.
5. And the top of the order is the need for self-actualization, the need to actualize yourself.

According to asri there are three kinds of human needs groups, namely needs related to biological aspects, sociology and theologies. This is based on the opinion that man is a biological, social and religious creature Murray himself destroyed the needs that exist in humans it can be grouped into two groups, namely primary needs or viscerogenic needs and secondary needs or psychogenic needs.

Anwar Rachman in Eka NAM Sihombing and Cynthia Hadita, that the purpose of marriage according to is to obtain legal offspring in society through the establishment of a peaceful and orderly household *sakinah, mawaddah, and rahmah*. The Civil Code considers marriage only in civil relations.⁵

Based on Law No. 1 of 1974 on Marriage determined the

principles or principles of marriage and everything related to marriage that has been adapted to the development of the times. The principles or principles are:

1. The purpose of marriage is to form a happy and complementary family so that each can develop his or her personality and achieve spiritual well-being.
2. In this Law it is stated that a marriage is valid when performed according to the laws of each religion and in addition, each marriage must be recorded according to the prevailing laws and regulations.
3. The law adheres to the principle of monogamy. Only if desired by the concerned by the relevant law and religion allows her, a husband can marry more than one.
4. This law adheres to the principle that the future husband and wife must cook their physical soul in order to be able to carry out the marriage in order to realize the purpose of marriage properly without ending in divorce and getting good and healthy offspring. Therefore, marriage between prospective spouses must be prevented.
5. Because the purpose of marriage is to form a happy, eternal, and prosperous family, this law adheres to the principle of complicating the occurrence of divorce. To allow divorce there must be certain reasons as well as to be done in front of siding court.
6. The rights and positions of wives are balanced with the rights and positions of the husband, both in-

⁵ Eka N.A.M Sihombing and Cynthia Hadita, *Konstitusionalitas Poligami Dalam Perspektif Hermeneutika Hukum Islam di Indonesia*, *Mahakim Journal of Islamic Family Law*, Vol. 5, No. 1, Januari 2021.

home life and in community relations, so that everything in the family can be negotiated and decided together by the husband and wife.

Based on the principles of marriage than in a marriage must meet the principles that have been determined by the law. Marriage based on the One True God, meaning marriage does not just happen according to the will of the parties, but as a gift of God to man as a civilized being. Therefore marriage is done civilly, in accordance with the teachings of religion that God has sent down to mankind. Every marriage has a purpose. This purpose is inferred in the function of husband and wife. There can be no function of husband and wife without containing a purpose. This purpose in the Marriage Act is clearly formulated which is to form a happy and eternal family / household based on the One True God. In article 1 of the Marriage Act the marriage formula also includes the purpose. The complete thing is "Marriage is the inner birth relationship between a man and a woman as a husband and wife with the aim of forming a happy and eternal family/home based on the One True God".⁶

The definition of marriage according to Islamic law is, an agreement or agreement to confirm (justify) sexual relations (sex) between men and women in order to realize the happiness of family life, which is covered by peace and

compassion in the way that Allah SWT.

According to Islamic law, marriage is an agreement that contains the ability to have intercourse with *lafadz* or translation of the word. So the meaning of this understanding is that if a man and a woman agree to form a household, then they should both perform a marriage contract first.

1. Definition of Contract Marriage

Mating contract is to marry with intention only within a certain period of time. For example, married for a month, a year or even 10 years. Some of these principles include:

- a. Purpose of Marriage
- b. Eternal Marriage
- c. Marriage Agreement

According to the provisions of article 29, the agreement must meet the following conditions:

1. Made at the time or before the marriage takes place.
2. In written form confirmed by the registrar officer.
3. The content of the covenant does not violate the limitations of law, religion, and decency.
4. Effective from the moment the marriage takes place.
5. During the agreement the agreement cannot be changed.
6. The agreement is contained in the marriage certificate.

Arrangement of Marriage Contract According to Marriage Law Number 1 Year 1974

In Indonesian, marriage is derived from the word "mating", which etymologically means to form a family with the opposite sex (having sex or intercourse).

⁶ Mardani, *Hukum Perkawinan Islam Didunia Islam Modern*, Cetakan Pertama, (Yogyakarta: Graham Ilmu, 2010), p. 15.

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Furthermore, Law No. 1 of 1974 on Marriage in Article 1 formulates it with: "Marriage is a bond born 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 One True God".

According to the Civil Code the arrangement of the terms of the validity of the agreement is described in Article 1320. In the article explained there are 4 terms of validity of the agreement, namely:

1. Agreed those who tied themselves up
2. Ability to make an alliance
3. A certain thing, and
4. A lawful cause.

Furthermore, in the doctrine of legal science that develops, the first and second terms are classified into subjective terms, because both terms are terms that concern the subject element (party) that performs the agreement, hereinafter referred to as subjective terms. While the third and fourth terms are terms that concern the object element of the agreement, hereinafter referred to as objective terms. If any of the terms of the four terms of the agreement are deemed to be a defective agreement, the agreement will be legally void or even null and void. If the agreement made by the parties does not meet the subjective requirements, then the agreement may be canceled, whereas if the agreement does not meet the objective requirements, then the agreement is null and void.

As for marriage there are several conditions that must be met in order for marriage to be carried out are:

1. Approval of both brides-to-be

2. Men are 19 years old, and women are 16 years old
3. Parental or court permission if not yet 21 years old
4. Not tied in a marriage
5. Not getting divorced a second time with the same husband or wife to be married
6. For widows, it's past waiting time
7. Have informed the registrar of marriage at least 10 days before the wedding is held
8. No party has proposed marriage prevention
9. There is no prohibition on mating

However, from some description of the terms of marriage as mentioned above in the second condition, namely the age requirement, there has been a change by Law No. 16 of 2019 which is a change from Law No. 1 of 1974 on Marriage. That the age requirement according to the Law both men and women when going to hold a marriage must be even 19 years old. Furthermore, it is understood that the marriage contract is a man who marries a woman through an agreement or contract concerning a certain thing such as a marriage agreement about how much can be given to the bride, then the period of time it takes to carry out the marriage.⁷

Furthermore, the marriage will be considered completed when the promised period arrives. Since then the couple has been declared no longer a husband and wife and there is no obligation for both parties to make a living, a place to live even

⁷ Hamid, Zahry. *Pokok-Pokok Hukum Perkawinan dan UU Perkawinan di Indonesia*. (Yogyakarta: Binacipta, 1978), p.1.

related to inheritance. The end of marriage without having to be done by divorce, because it has been agreed the time of termination of the marriage as described in the contents of the agreement.

Marriage is considered valid when it meets the pillars and conditions of marriage. Things that are included as the harmony of marriage:

1. The parties who carry out the marriage contract are the bride and groom.
2. The existence of an agreement (sighat) is the word of the female guardian or her deputy (ijab) and accepted by the male or his deputy (qabul).
3. The guardianship of the future wife.
4. There are two witnesses.

If any of the conditions mentioned above are not fulfilled, then the marriage held is considered invalid in the eyes of the law, it can even be ensured that the marriage is considered never to have happened. Therefore, if the pillars and conditions of marriage have not been met, then the bride and groom who perform the marriage have not been allowed to even be forbidden to have sexual intercourse. Namu if the four pillars can be fulfilled then the marriage performed by the parties in question has been considered valid.

The marriage has been considered valid in islamic view, if it is associated with the provisions as stated in article 2 (paragraph 2) of Law No. 1 of 1974 on marriage that states: "Each marriage is recorded according to the prevailing laws and regulations." As an affirmation of the provision that Law No. 16 of 2019 on

Amendments to Law No. 1 of 1974 on Marriage provides restrictions on the minimum age of marriage to a man and a woman equal to 19 years. But if the age of the bride and groom is not sufficient for the minimum limit, article 7 paragraph 2 of the Law explains that marriage can still be carried out and legalized by requesting dispensation at the court or other authorized officials and the request for dispensation is made by both the parents of the groom and the bridegroom.

Legal Norms and Religious Norms have synergized and have provided clear arrangements on matters that should be considered in the implementation of marriage. Starting from the legal requirements and harmony of marriage, even some other important things in order to achieve the best goal of a marriage to the ark of married life. However, in relation to contract marriage there is not a single article in the applicable legislation in Indonesia that provides arrangements regarding contract marriage. Precisely based on the results of the author's analysis when associated with various laws and regulations in Indonesia regarding marriage conducted contractually by the parties, its existence can not be considered valid and recognized according to the law, because it is clearly based on mutant material agreements considered as having violated the applicable provisions according to the positive legal views prevailing in Indonesia.

Contract Marriage Arrangements According to Islamic Law

The definition of marriage according to Islamic law is, an

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agreement or agreement to confirm (justify) sexual relations (sex) between men and women in order to realize the happiness of family life, which is covered by peace and compassion in the way that Allah SWT.

According to Islamic law, marriage is an agreement that contains the ability to have intercourse with *lafadz* or translation of the word. So the meaning of this understanding is that if a man and a woman agree to form a household, then they should both perform a marriage contract first. The word marriage according to Islamic legal terms is the same as the word marriage or *zawaj*.

The so-called marriage according to *syara'* is an agreement (*ijab qabul*) between the guardian of the wife and the bridegroom with certain sayings and fulfilling the pillars and conditions. Mating contract in Arabic is known as *mut'ah* marriage, *mut'ah* marriage is a compound word consisting of two words namely marriage and *mut'ah*. Marriage in the language is *akad* and *watha'*. In this term marriage is defined as an agreement. The word marriage is then juxtaposed with the word *mut'ah*.⁸

Marriage according to Muhammad Abu Zahrah is an agreement that makes it lawful sexual relations between a man and a woman, help each other help each other and give rise to rights and obligations between descendants. It can be understood that marriage is an effective means of nurturing people

from adultery, because simply marriage aims to form a happy and prosperous family and to develop offspring.

The requirement to perform a contractual marriage is not related to the requirements as is commonly done for the terms of the validity of permanent marriage. It can be performed by presenting a witness, or without a witness, in front of the guardian or vice versa, provided that the married woman agrees to accept it. According to Ja'far Murthada Al-Amili, which must be fulfilled in the marriage contract is: puberty, reason, there is no obstacle *syar'i* for the marriage, such as the existence of *nasab*, sister that have one mom who give breast milk, still be the wife of another person, or become his wife's sister as stated in the Qur'an.

After the agreed time runs out, the woman if she wants to marry another male she must do *iddah* for two months. But there is another opinion that says one month if the period is normal, and forty-five days if she is an adult but not menstruation. While the *iddah* of a pregnant woman or left to die by her husband, then her *iddah* as in permanent *iddah*.

According to the Shi'ite scholars the conditions of contractual mating are

1. Baligh
2. Sazed
3. There are no obstacles *syar'i* (*syarak*)

Mating contracts that must be fulfilled are:

1. *Siqhah* (*mut'ah* marriage pledge)
2. Future wife
3. Dowry or dowry
4. Specific time limits

⁸ Maruf Amin, *Himpunan Fatma Majelis Ulama Indonesia*, (Jakarta: Emir, 2015), p. 350.

The process of contract mating is not complicated, usually going through three paths, namely directly related to the bride, pimp, or through touts that are passed on to the pimp. The opportunity occurs when the two brides meet to talk about the nominal dowry and the time limit of life together.

In Islamic law, the marriage covenant is explained in QS, An-Nisa verse 4. Contract marriage in Islam is known as mut'ah marriage, (muaqqat) which means marriage for a certain time or munqathi which means marriage is cut off. Mut'ah marriage was originally allowed by

The Prophet forbade mut'ah marriage and litigate it until the Day of Resurrection. The basis of the prohibition of marriage mut'ah is found in QS. As well as the hadiths of the Prophet Muhammad SAW the prohibition of marriage mut'ah is narrated by the Prophet Muhammad SAW.

Characteristics of marriage mut'ah or marriage contract, which is as follows:

1. Ijab qabul uses the words marriage or with the word mut'ah
2. No guardian
3. No witnesses
4. There are time-limited conditions
5. No inherited inheritance between husband and wife
6. There is no divorce.

In the implementation of mut'ah marriage there are witnesses in the marriage contract, the law mustahab / do not oblige it. Similarly, the permission of the guardian is not a necessity only that it is a prudence if the woman is still a girl.

In marriage mut'ah is not a rule about divorce because the marriage will end with the expiry of the predetermined time. After the end of the marriage period, the period of iddah for the wife is 2 menstruation. If the month does not come, then the iddah period is 45 days, but if the husband dies his iddah period of 4 months and 10 days, and there is no inheritance of the husband and wife.

Based on the description of the above statement it is clear that contract marriage or marriage mut'ah is strictly prohibited and contrary to the teachings of Islam. Marriages that do not meet the pillars and conditions in Islam are null and void. So the law is haraam or false, because it does not heed the purpose and principle of a very sacred marriage that is marriage for a long time not for a while.

Legality of Marriage Contracts In Indonesia

In this sub will be discussed at once in the show how exactly the legal status or legality of the marriage contract from the study of legal system in Indonesia, how the validity whether the marriage contract is valid or invalid in the applicable law in Indonesia, namely Islamic law and positive law according to the legislation.⁹

The purpose of marriage as stipulated in Article 1 of Law No. 1 of 1974, namely to form a happy and eternal family / household, by the Compilation of Islamic Law is affirmed and expanded by societal values in home life is well lived, then

⁹ Martiman Prodjohamidjojo, *Hukum Perkawinan Indonesia*, (Jakarta: PT. Abadi, 2002), p. 8.

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in it will be covered by various mutual needs.

Based on the above explanation it is clear that contract marriage is contrary to applicable law. It is known that the status of contract marriage is invalid because it does not meet the pillars and conditions of marriage that have been determined by Islamic law and Law No. 1 of 1974 on marriage. Contract marriage is also contrary to the purpose of marriage as stated in the Quran, contract marriage is a marriage that is performed outside the prevailing norms in Indonesia.

CONCLUSION

The arrangement of contract marriage according to the perspective of Law No. 1 of 1974 is a marriage that is contrary to the law because it is not in accordance with the terms, principles and norms of the law. In the perspective of Islamic law against contract marriage known as mut'ah marriage may or may not.

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