



Position of Contract Marriage in View of Islamic Law (Challenges and Dynamics in Bogor Regency)

Tolkah

Sekolah Tinggi Ilmu Hukum Gunung Jati, Tangerang, Indonesia. E-mail: dr.tolkah@gmail.com

ARTICLE INFO

Keywords:

Contract Marriage, Islamic Law, Bogor Regency.

How to cite:

Tolkah . Position of Contract Marriage in View of Islamic Law (Challenges and Dynamics in Bogor Regency). Journal of Law Science (Ext. 2019)

DOI:

10.18196/jls.2018.0096

ABSTRACT

Marriage is an obligation that will involve two human men and women, in this process, of course, every couple wants an eternal and lasting bond and avoids the act of divorce which is strictly prohibited in religion. But in practice every marriage relationship certainly has a risk that can break the ties leading to a deviation. In Indonesia, there is a form of marriage irregularity in several areas, one of which is in Bogor Regency. This case is called a contract marriage or in the teachings of the Islamic religion it is often called a muth'ah marriage, in the process of mut'ah marriage or in Indonesia itself it is called a contract marriage which has very limited regulations and is also very far from Islamic religious law.

1. Introduction

In this life, of course, a man and woman enter a period that wants to form a harmonious and sacred relationship, this desire comes from a biological need as well as an economic need. Taking an action that involves a man and a woman to be able to live together who are bound in a legal bond both religiously and legally in the state, this act is called marriage. Nida, (2018) explains that the Islamic law of marriage is an 'contract' engagement between the female guardian of the prospective wife and the man who is her future husband. The marriage contract must be pronounced by the woman's guardian in a clear form of consent (*serah*) and received (*Kabul*) by the prospective husband which is carried out in the presence of two witnesses who meet the requirements.

There are so many factors that cause a person to get married, one of which is to avoid actions that can lead to sinful or immoral acts. Besides that, marriage is a sacred bond that gives birth to a lot of happiness that might not be achieved when living alone. Marriage is also expected to meet physical and spiritual needs, as well as to preserve the human type and save society from moral damage (Shafira, 2010).

Obtaining offspring is an invaluable gift and is desired by many married couples, in the process marriage is a form of action that provides many benefits to their partners, where the main purpose of a marriage is the formation of a *sakinah, mawadah and warahmah* family (May,

2012). In the teachings of Islam itself, the marriage bond is a form of devotion that is shown by a servant to His God, besides that by marrying a Muslim, it has also completed half of the faith (Ridwan, 2014).

In Indonesia itself there is a law that regulates manners and manners in a marriage, this can be seen in Law Number 1 of 1974 concerning Marriage and also in the Compilation of Islamic Law in Book 1 for Muslims, Based on Article 1 of the Law Number 1 of 1974 that, "Marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family household based on God Almighty (Saleha, 2018).

Realizing a harmonious family is a challenge that must be met by every married person, on the basis of a sense of belonging to each other where in the relationship there are laws and rules that must be obeyed and have been spoken in the marriage contract. Meanwhile, Daud (2018) defines marriage as a transaction that results in a contract in which a man or woman, corporate or individual, personally or through a representative has the right to continually have sex with a woman.

So in the process the marriage bond is a concept that involves the inner life of a husband and wife, who will take the family ark for a lifetime with the hope that the holy promise that has been spoken will only happen once in a lifetime with the aim of only hoping for the pleasure of Allah SWT. comes from Arabic, namely *nikaahun* which is a *masdar* or the original word for the verb *nakaha*, which has the same meaning as *tazawwaja* (Ali, 2016). So the word marriage means *adh-dhammu wattadaakhul* means overlapping and entering, while a prosperous family is the dream of every human being, it is hoped that in marriage to follow the rules and sunnah of the Prophet who upholds compassion, is honest, fair and of course loyal.

But along with the development of the times and also life The challenges in marriage are increasingly diverse, they are no longer listed in the marriage book and legally carried out in the religious office, marriage in the present era has more varied forms. For various reasons and also needs, the marriage process today does not consider religious or state status, if the male and female parties have agreed with the rules and conditions that have been agreed upon beforehand, the marriage process can be carried out immediately, by presenting several witnesses and also representatives from each family, the marriage contract process was carried out properly even though it was not sent directly to the religious office and received a marriage book which had normally been signed by the local Ministry of Religion office. In Indonesia itself, there is a marriage irregularity that occurs in one area, precisely in Bogor Regency, has a myriad of beautiful and cool tourist attractions, Bogor Regency is a tourist destination that is often visited by many local and foreign tourists, but behind its busyness. This tourist visit is a phenomenon that involves the Bogor community and foreign tourists, especially from Middle Eastern countries.

Contract marriage, that is the term for a tradition that occurs in Bogor Regency which is the other side of the effect of increasing tourist visits who come there. but behind the busy tourist visits there is a phenomenon that involves the Bogor community and foreign tourists, especially from Middle Eastern countries. Contract marriage, that is the term for a tradition that occurs in Bogor Regency which is the other side of the effect of increasing tourist visits who come there. but behind the busy tourist visits there is a phenomenon that involves the Bogor community and foreign tourists, especially from Middle Eastern countries. Contract marriage, that is the term for a tradition that occurs in Bogor Regency which is the other side of the effect of increasing tourist visits who come there.

Contract marriage or in Arabic often referred to as *nikah mut'ah*, is a marriage process that involves a man and a woman in which there is a special rule and is certainly very different

from marriage in general, in the law of contract marriage itself there is a period of time that has been in pre-determined, that is, it can be done within a very limited time, usually in the context of a contract marriage, the burden of living is not determined nor can it be mutually inherited if one of the two dies before the end of the marriage. Contract marriage is also called temporary marriage or interrupted marriage, because a man who marries his woman temporarily for a day, a week or a month. It is called kawin mut'ah because men only intend to have fun for a while, not forever (Abunawas, 2013).

Surkalam said that in a contract marriage, there are conditions for marriage which are very different from marriages that are guided by Islamic law, including (Hadi, 2018):

- a. Kabul consent
The consent granted in a contract marriage does not take place between the marriage guardian with the groom but between the woman and the man.
- b. Candidate for Wife
The term wife in a contract marriage is not the same as permanent marriage in this case as recognized by the syi'ah figure Ibn Babawaih. So that the most suitable term in the term of contract marriage is fatner.
- c. Time Limits
If in a permanent marriage, the determination of the time limit can damage the pronounced agreement, then in contract marriage it is a must, because in the marriage process the contract is limited with the time relationship that can be very short.
- d. Dowry
The term dowry in contract marriage is actually a fee to pay for the pleasure that has been obtained from the contracted woman's body. This is different from the provision of a dowry that exists in a permanent marriage, apart from being a symbol of the relationship between parties as well as a symbol of recognition of the wife's authority in the field of property.
- e. Duration
One aspect that distinguishes between a contract marriage or mut'ah and a daim marriage is that in a marriage the contract is terminated by both parties and it is said to be married within a certain period of time. It is very different from the daim marriage which is not limited by time, meaning that the marriage runs until the end of life separates.
- f. Scope of freedom
In a contract marriage, a male partner is not entitled to provide livelihood obligations to a wife because everything depends on the agreement of the two parties and is determined at the time the contract takes place, whereas in the law of marriage a man is the head of the family and is obligated to provide everything related to it. with his wife in the form of a place to live, clothes and other necessities of life.
- g. Inheritance
In a daim marriage, it follows the provisions of the applicable terms stated in the law and the religious requirements that the wife or husband will have the right to inherit from each other. Whereas in a contract marriage, there is no demand to inherit from each other. This also applies to children from the results of this marriage.

The case of contract marriage that occurred in Bogor Regency itself is actually very contradictory to Islamic law and state law, if you look at it from a religious point of view, contract marriage is a deviation from the sacred values of marriage which have been reported in several ways. The hadith and also the Qur'an which says that the marriage bond is a lifelong worship that is carried out together, namely a man and a woman who have fulfilled the laws and conditions of marriage and have a noble goal, namely to realize a marriage that is sakinah mawadah and also warahmah which is based on compassion, sincerity, and is completely unlimited with time (Hariati, 2017).

The aims and objectives of this study are to determine the position of contract marriages according to the viewpoint of Islamic religious law and Indonesian state law, as well as the dynamics that occur in the Bogor Regency area.

As for some references and also previous research that researchers used in the preparation of this study are:

- a. The phenomenon of the Self-Concept of Women in Contract Marriage in the Puncak Area of Bogor, West Java, this research was compiled by CellinaStevani using qualitative descriptive research method, and the results of this previous study explain that there is a self-concept in contract marriage actors who are at the top of Bogor with several dynamic problems concerning aspects of self-concept, self-esteem and self-integrity that affect the environment and also the top community of Bogor.
- b. The phenomenon of contract marriage in the Puncak area of Bogor, this research was compiled by Siti Sarah Maripah using a qualitative approach and descriptive study methods and the results of this previous research explain that the phenomenon of contract marriage is a deviation from Religion and the rule of law of Law No.1 of 1974 concerning marriage. In society, this practice of contract marriage is a deviant thing, or is known as a social deviation.
- c. Marriage *Muth'ah* or Marriage Contract in the Perspective of Indonesian Positive Law and the Legal Consequences for Marriage Assets and Inheritance This research is compiled. This study uses an empirical juridical approach where the researcher first examines secondary data and then continues to conduct research in the field, and the results of this previous research are Such contracted marriages are invalid because they contravene Article 2 of the Marriage Law where a marriage must be registered. Even though the marriage has been carried out in Islam, it is necessary to pay more attention to the terms and conditions of marriage whether it has really been fulfilled or not.

2. Method

In this study, the researcher wants to examine a phenomenon that discusses how the mechanism and position of contract marriage according to the viewpoint of Islamic religious law and Indonesian state law, as well as the dynamics that occur in the Bogor Regency area. In this study, researchers used a qualitative approach by examining several journals or articles related to the topic of contract marriage law in Islamic perspective. There are two sources of data used in this study, where the data includes primary data as well as secondary data, which means secondary data is the main data related to the topic and also the research being studied, where the researcher gets the sources. these are from journals and also references related to the position of contract marriage according to the viewpoint of Islamic religious law and state law.

Data collection methods are techniques used in collecting research data to determine the success or failure of a study. The data collection techniques in this study are observation and interview techniques (Irianto, 2017). In qualitative research the main objective of data analysis techniques is to alleviate data and facts that have been found in the field in a form that is easier to understand or the data is summarized and concluded that is easier to interpret, so that the problem relationship is going on in between the research that is being done can be learned easily.

Thus, the data that has been reduced will provide a clearer picture. Presentation of data After the data is reduced, the next step is to display or present the data. In qualitative research, the presentation of this data can be done in the form of tables, graphs, diagrams, and the like. Through the presentation of the data, the data is institutionalized and arranged in a relationship pattern, so that it is easy to understand.

3. Analysis and Results

Based on the results of the research that has been carried out, using the observation method of several articles related to the topic of discussion of contract marriage law in Islam and by evaluating and also analyzing data on findings in the field, it can be concluded that some results and also discussion carefully find, namely:

3.1 The dynamics in the deviation of contract marriages in Bogor Regency

The position of contract marriage which is only temporary has actually caused several losses that hit the people of Bogor Regency, especially women where self-integrity is seen as a commodity, because the position of a contract marriage is limited by time, the contract marriage can end at any time, and after It is very likely that the woman can move from one vocation to another, mentally, maybe the self-confidence that is generated from the marriage contract is very large, in addition to the loss of self-esteem, contract marriage is also very influential on one's mindset and integrity. This, in turn, affects their self-concept. According to (Shihab, 2010) self-concept is an important part of the individual, not a factor that is born from birth but a factor that is learned and formed from individual experiences in dealing with other individuals. Each individual has a different concept as the basis by which he views and gives an assessment of himself (Rusdi, 2016).

3.2 Factors and Challenges of contract marriage in Bogor Regency

The background of the problems that occurred in Bogor Regency which resulted from the existence of contract marriages is a negative side that comes from the existence of an outside culture that enters through tourism activities which raises pros and cons among the community there. The contract marriage, which is said to have existed for almost 10 years, has had a very bad impact on the behavior and culture of the community there, especially women, the process of contract marriage itself does involve both parties and the agreement already involves several the benefits that can be obtained from both the community of Bogor Regency and from outside parties, first, contract marriage itself is carried out with a very limited time limit and is carried out voluntarily, in which the male and female parties present a marriage guardian, after that it is also stated how long the contract marriage will be carried out because by stating the time limit one of the conditions for contract marriage has been fulfilled. The area that carries out the most practice of contract marriage itself is in the Cisarua area, because this area is the most visited by foreign tourists by offering cool views and has many lodging facilities which of course offer contract marriage practices.

Most of the Cisarua people who offer the practice of contract marriage are those who have Sunni Islamic teachings, and ironically the parents there are competing in offering their daughters to be married on contracts by foreign tourists who indeed most of them work as bosses or sultans, then With all the benefits offered by these foreigners, it is natural that there are so many people there who want to practice contract marriage. The dowry that is offered is very diverse, starting from money with a nominal amount that is very much, jewelry, cars and some even offer a house though, with the hope that after the marriage contract process is carried out, the economic standard of the people in Cisarua can be fulfilled properly and prosperously. However, behind the taking place of the contract marriage itself, of course there are a lot of impacts starting from the decline in the dignity and degree of women in Bogor Regency, the loss of the ethical and moral components of the Cisarua community, because in the process the contract marriage itself has a very bad meaning, namely marriage that is based on mere sexual pleasure, this of course seriously injures the essence of the real meaning of marriage, and Islam strictly prohibits the process of contract marriage itself, as the word of Allah SWT "O human, actually I used to allow you to do mut'ah nikah, but now Allah azza" wa

jalla has forbidden this marriage until the Day of Judgment (Irfan, 2011). In another argument, the Prophet had also conveyed his message regarding the prohibition of Muslims from engaging in *mut'ah* (contract) marriages. Islam is a deadly poison, damages the order and sanctity of human life, Islam has allowed contractual marriages with certain conditions to prevent the practice of adultery and prostitution as well as sin and damage "Thabathaba'i and Nasr (Halim, 2002).

3.3 Contract Marriage in the Perspective of Islamic Law and the State

Islamic law is established and created solely for the welfare of its people both in the world and in the hereafter, and one form of God's compassion for its people is to instruct all of its people to hasten marriage services, because in that worship there are lots of blessings and also kindness.

Referring to the definition of marriage in estimation, namely the word marriage comes from the Arabic word which means an agreement between a man and a woman, in which there is a contract that guarantees to complement each other in living together without any time limit. which is determined, This means that marriage is a complete agreement for a person as a human being, not only because of the physical, spiritual, or intellectual dimensions alone (Al-Mashri, 2016).

Marriage is an event, where a pair of brides or a pair of prospective husbands or wives are formally brought together in front of a certain religious leader or head, witnesses and a number of attendees, to be legally legalized as husband and wife, with certain ceremonies and rituals (Wibisana, 2016).

In Islamic law itself there are several models of marriage that we often encounter in Indonesia, there are unregistered marriages, contract marriages and others, but in this research the researcher wants to examine more deeply the meaning and understanding of contract marriage in Indonesia, especially in the region Bogor Regency, from the perspective of Islamic law. A contract marriage is also called a temporary marriage or an interrupted marriage, because the man who marries the woman only temporarily, can be a day, a week or a month.

It is called *kawin mut'ah* because men intend to have fun temporarily, not forever (Lestari, 2018). At the time of the Prophet, there was also a time when the Arab community practiced *mut'ah nikah*, but at that time the conditions and circumstances were very different and it could be said that it was an emergency, the people of the Prophet did *nikah mut'ah* while they were at war and they married in a very remote situation from his wife, at that time the Prophet allowed his people to perform *mut'ah nikah* or in the present era it is known as a contract marriage.

However, when activities returned to normal and the war was over, the Prophet strictly prohibited *mut'ah* marriages from happening again among Muslims. As where the hadith quote states that "But then the Prophet forbade it when liberating Makah Regency in the year 8 H./630M. When referring to the contract marriage process that took place in the Cisarua area of Bogor Regency, then this action was very wrong to do, because in the process the marriage was based on mere biological desire or just for fun even the activity was very close to the act. adultery. As for the Indonesian MUI itself has issued a fatwa that prohibits *mut'ah* or contract marriage from being carried out in the country of Indonesia. The Indonesian Ulama Council (MUI) issued a fatwa based on the arguments put forward by a number of scholars regarding the prohibition of contract marriage, including: God's Word: "And (among the characteristics of believers) they maintain their genitals except for their wives or female slaves. In fact they (in this case) are beyond reproach." QS al-Mukminun (Handoyono, 2013).

4. Conclusion

Based on the research that the researchers conducted on the status of contract marriage according to the viewpoint of Islamic religious law and state law, the researcher can conclude several main points that can be drawn conclusions, the results of the various observations that the researchers found in the field, namely:

- a. *Mut'ah* marriage or what is better known in Indonesia as contract marriage is a marriage that did happen in the time of the Prophet, but in very different contexts and circumstances.
- b. Contract marriage itself has the meaning of marriage which is limited by several conditions, one of which is time, in practice contract marriage has a very short time limit.
- c. Islam views marriage as a sacred bond that is very valuable, even the position of marriage is very high in the eyes of Allah SWT, because by performing a marriage ritual a Muslim is considered to have completed some of his faith.
- d. In the case of contract marriages that occurred in Bogor Regency itself, many violated religious law and also state law, because in practice it did not have a basis and law as stated in both the Qur'an and Indonesian state law written in the 1945 Law.
- e. The Indonesian Ulama Council itself has issued a fatwa regarding the practice of contract marriage law that occurs in Indonesia. Because it is very contrary to the arguments contained in the AL-Q'uran.
- f. The contract marriage that occurs in the Bogor Regency area itself is very far from the ethics and morals of the Indonesian people, because it has violated the rules that have been set by the government.
- g. In practice, contract marriage law does not inherit each other because the agreement made is only temporary, while in the daim marriage process, someone who is married will get inheritance rights in accordance with the law and the Sunnahs of Islamic religious teachings which are very clearly written in the arguments. AL-Q'uran's argument.

References

- Abunawas, S. S. (2013). HUKUM NIKAH MUT'AH: MEMOTRET HADIS NABI SAW. TENTANG KEBOLEHAN DAN KETIDAKBOLEHANNYA. *Al-'Adl*, 6(2), 128-145.
- Ali, O. M., & Sy, M. (2016). HUKUM NIKAH MUT ' AH DAN HUBUNGANNYA DENGAN PEMBENTUKAN KELUARGA SAKINAH (*Studi Keluarga Sakinah Model Kementerian Agama*). 1(1), 30-41.
- Al-Mashri, S. M. (2016). *Bekal Pernikahan*. Qisthi Press.
- Busyro, B. (2017). Menyoal Hukum Nikah Misyār dalam Potensinya Mewujudkan Maqāṣid Al-Aṣḥiyah dan Al-Tab'iyah dalam Perkawinan Umat Islam. *Al-Manahij: Jurnal Kajian Hukum Islam*, 11(2), 215-232.
- Daud, F. K. (2018). Nikah Kontrak Modus Human Trafficking (Kritik Atas Fiqh Munakahah Mazhab Syi'ah). *Al Hikmah: Jurnal Studi Keislaman*, 8(2), 252-270.
- Hadi, M. F. K. (2018). Konsepsi Hukum Nikah Siri di Indonesia: Upaya Sinkronisasi antara Living Laws dengan Positive Laws. *Indonesian Journal of Islamic Law*, 1(1), 18-40.
- Halim, A. (2002). Nikah Mut'ah Dalam Fiqh dan Perundang-Undangan Indonesia. *Musāwa Jurnal Studi Gender dan Islam*, 1(2), 197-210.

-
- Handoyo, E., & Rohayuningsih, H. (2013, June). Kawin Kontrak: Latar Belakang, Keabsahan Hukum dan Dampaknya (Studi kasus di Kabupaten Jepara). In *Forum Ilmu Sosial* (Vol. 40, No. 2).
- Hariati, S. (2017). Kawin Kontrak Menurut Agama Islam, Hukum Dan Realita Dalam Masyarakat. *Jatiswara*, 30(1).
- Hariati, S., Hukum, F., & Mataram, U. (n.d.). *KAWIN KONTRAK MENURUT AGAMA ISLAM , HUKUM*. 93-102.
- Irfan, M. N. (2011). Kriminalisasi Poligami Dan Nikah Siri. *Al-'Adalah*, 10(2), 121-140.
- Irianto, S. (2017). Metode Penelitian Kualitatif dalam Metodologi Penelitian Ilmu Hukum. *Jurnal Hukum & Pembangunan*, 32(2), 155-172.
- Lestari, N. (2018). Problematika Hukum Perkawinan Di Indonesia. *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, dan Keagamaan*, 4(1), 43-52.
- May, A. (2012). Kontroversi Status Hukum Nikah Mut'ah (Analisis terhadap Pendapat Para Ulama). *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum*, 46(1).
- Nida, N. F. (2018). *Analisis terhadap hukum nikah mut'ah menurut M. Quraish Shihab* (Doctoral dissertation, UIN Walisongo Semarang).
- Ridwan, M. S. (2014). Perkawinan dalam perspektif hukum Islam dan hukum Nasional.
- Rusdi, M. A. (2016). Status Hukum Pernikahan Kontroversial Di Indonesia (Telaah Terhadap Nikah Siri, Usia Dini dan Mut'ah). *Al-'Adl*, 9(1), 37-56.
- Shafra, S. (2010). Nikah kontrak menurut hukum Islam dan realitas di Indonesia. *Marwah: Jurnal Perempuan, Agama dan Jender*, 9(1), 15-27.
- Shihab, M. Q. (2010). *Perempuan: Dari Cinta Sampai Seks, Dari Nikah Mut'ah Sampai Nikah Sunnah, Dari Bias Lama Sampai Bias Baru*. Lentera Hati Group.
- Wibisana, W. (2016). Pernikahan dalam islam. *Jurnal Pendidikan Agama Islam-Ta'lim*, 14(2), 185-193.
- Wijaya, H. (2018). *Analisis data kualitatif ilmu pendidikan teologi*. Sekolah Tinggi Theologia Jaffray.