

# EXISTENCE OF MARRIAGE CONTRACT REVIEW FROM THE PRINCIPLE OF FREEDOM OF CONTRACT (CASE STUDY OF MARRIAGE IMPLEMENTATION CONTRACT IN CISARUA, WEST JAVA)

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**Abstract:** *The phenomenon of contract marriage in Cisarua, West Java begins with an agreement between the two parties. The contract is contrary to the legal requirements of Article 1320 of the Civil Code, the agreement that the objective conditions are related to a lawful cause and a certain matter. The agreement is null and void if there is no objective contract that meets the requirements. Islamic law initially justified the practice of mut'ah marriage, but because the marriage contract was more negative, Allah SWT forbade the marriage contract until the Day of Judgment. This is evidenced by the hadith narrated by Muslim.*

**Key Words:** *Contract Marriage, Principle of Freedom of Contract, Islamic Law.*

## 1. INTRODUCTION:

Contract marriages in Cisarua sub-district are carried out by Arab men with native women. The marriage occurred as long as the Arab man stayed for less than 3 months to travel in Cisarua District. Contract marriages that occur between Arab men and indigenous women in Cisarua District do not only involve two people but involve a "team" that has different roles so that the marriage can take place. Arab men do not look for their own partners, but are surrounded by several parties around them, there is a kind of broker/broker or matchmaker (*biong*) who connects them with male tourists from Arabia.

In its development, the behavior of contract marriages in Cisarua has become a system that occurs continuously. Systemically and slowly then it becomes *ahuman trafficking*. Specifically what happens in this contract marriage behavior becomes

## 2. THEORITICAL FRAMEWORK:

### a. Legal Certainty Theory

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is enforced, that those entitled by law can obtain their rights and that decisions can be enforced.[1]

### b. The Concept of Marriage

Article 26 of the Indonesian Civil Code considers that marriage is only a civil relationship. While the Compilation of Islamic Law defines marriage as a very strong contract or *mitsaaqan ghaliidzan* to obey Allah's commands and carrying it out is worship.

### c. Agreement Theory

Article 1313 of the Civil Code stipulates that an agreement is an act by which one person or more binds himself to one other person.

### d. The Principle of Freedom

Contract In the normative provisions in Article 1338 of the Civil Code, freedom in making contracts is also limited by the limitative provisions in Article 1337 of the Civil Code, because this article prohibits contracts whose substance is contrary to law, public order and decency.[2]

### 3. LITERATURE REVIEW:

According to Sajuti Talib, marriage is a sacred and broad and firm agreement to live together legally between a man and a woman to form an eternal, polite, loving, peaceful and happy family.[3]

Contract marriages are married with the intention of only being married for a certain period of time.[4]

According to Subekti, an engagement is a legal relationship between two people or two parties based on which one party has the right to demand something from the other party and the other party is obliged to fulfill that claim.[5]

### 4. METHOD:

The method used in this study is the method of normative juridical approach, namely law that is carried out on legal principles, legal systematics, legal synchronization, legal history and comparative law.[6]

### 5. DISCUSSION:

West Java is the province with the *trafficking*. Areas in West Java, such as Indramayu, Bandung, Sukabumi, and Cisarua. Women as objects, have been traded and exploited sexually and economically. The research results of Atwar Bajari (2015) show that poverty, low education, local culture are factors that cause women to become commodities in trade.[7] In addition, the approach of interpersonal communication through family members, partners or boyfriends by recruiters is a strategy in recruiting potential *trafficking*. Socialization and understanding to the community about the practice of contract marriages in various perspectives, it seems that it should be carried out on a *massive* and sustainable basis. Do not just because of economic interests alone, seek materialistic-consumptive pleasures, as a result violate legal norms, erode the sanctity of the institution of marriage and undermine the social order.

### 6. ANALYSIS:

#### A. Views of Islamic Law in the Implementation of Contract Marriages

The Maliki, Syafi'i, Hanafi and Hambali schools agree that contract marriages/mut'ah marriages are unlawful and invalid (canceled). Imam Syafi'i said that all marriages that are determined to last until a known or unknown time (temporary), then the marriage is invalid, and there are no inheritance or divorce rights between the husband and wife.

#### B. Contract Marriage in View of the Principle of Freedom of Contract

The principle of freedom of contract is the principle that underlies various forms of existing contracts. This principle emphasizes the free expression of will in the contracts made. The general principle of contract law is that each party is free to enter into contracts of agreed content and form. Freedom of contract (*contract vrijheid*) gives freedom to each individual to enter into contracts with other parties. This principle forms the basis of all forms of contracts made by the parties. This principle emphasizes that according to the law the parties are free to determine the things that will be stated in the contract. Likewise regarding the form of the contract, the parties are free to choose whether it is written or not. The application of the principle of freedom of contract is guided by several things, namely fulfilling the requirements for the validity of an agreement, not violating applicable customary provisions and norms, and being carried out in good faith.[8]

#### C. Legal Consequences of Contract Marriage Against Marriage

Even though contract marriages in Cisarua are carried out according to the Islamic religion, which means fulfilling Article 2 paragraph (1) of the Marriage Law, in this case it cannot be directly said to be legal according to religion. This is because the marriage must be re-examined whether it is true that the terms and pillars of marriage in Islam have really been fulfilled or not. So, in other words, even though the marriage has met the requirements, it cannot be said to be valid/not valid before being examined by practitioners, in this case the religious court.

## 7. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- 1) The legal arrangements for contract marriages (mutah marriage) in the perspective of the Marriage Law are illegal marriages and have no legal force, because these marriages are very much against Article 1 and Article 2 of Law Number 1 of 1974.
- 2) The principle of freedom of contract underlies various forms of existing agreements by emphasizing the free expression of will in the contracts made.
- 3) The legal consequence of a contract marriage for a wife is that a contract wife is not considered a legal wife, is not entitled to maintenance and inheritance from her husband if she dies, is not entitled to assets in the event of a separation, because according to the law of marriage, the contract marriage is considered not happened.

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