



Urgency Of Filling The Legal Gaps in Preventing Contract Marriages

Ubaidilah Ishaq^{1*}, Riswadi Riswadi²

^{1,2} Universitas Borobudur, Indonesia

Email : ubaiishaq1708@gmail.com^{1*}, riswadi@borobudur.ac.id²

Abstract. *This research examines the issue of contract marriages in Indonesia, focusing on the legal gaps that result in uncertainty and negative impacts on women and children. Despite the increasing prevalence of contract marriages, there is no clear regulation in the Marriage Law or criminal law governing this practice, placing individuals involved in vulnerable positions, especially women who are often victims of exploitation and violence. Through an analysis of existing regulations and their impact on social structures, this study highlights the need for legal reform, including the revision of Law No. 1 of 1974 on Marriage and the formulation of specific legislation to prohibit contract marriages. This research also recommends strengthening the oversight system, law enforcement, and providing protection services for women and children to create a safer and more equitable environment.*

Keywords: *Contract Marriage, Legal Gap, Women's Protection, Children's Protection*

1. INTRODUCTION

Contract marriage is a social phenomenon that arises from individuals' needs to establish relationships based on specific agreements, without going through the formal legal procedures that usually govern official marriages. In society, contract marriage is often associated with practices that occur across various social strata, both in certain cultures and in broader communities. This phenomenon often emerges as a solution for couples facing various obstacles to formal marriage, such as differences in social status, economic issues, or legal factors that hinder them. The problems arising from contract marriage are diverse, as contract marriages often overlook the legal protections provided in official marriages. This can result in injustices for one party, particularly women, who are often more vulnerable in such relationships. The lack of clarity regarding the legal status of contract marriages can also lead to disputes over inheritance rights, division of property, and child custody. Furthermore, the phenomenon of contract marriage can exacerbate social stigma and contribute to instability within family relationships, as relationships built on contractual agreements are often temporary and not bound by strong commitments. [1]

Regulations regarding marriage in Indonesia are governed by Law Number 1 of 1974 on Marriage (hereinafter referred to as the Marriage Law), which emphasizes that marriage is a sacred moment that must be carried out in accordance with the religion and beliefs of both prospective spouses. According to the Marriage Law, a marriage is considered valid if conducted in accordance with the laws of each religion and belief and must be recorded in accordance with applicable regulations. This registration serves as administrative data by the

state, similar to the registration of births and deaths. For couples who are Muslim, registration is done at the Religious Affairs Office (KUA), while for those who are Christian, Catholic, Buddhist, and Hindu, registration is done at the Civil Registry Office. Despite the existing regulations governing the requirements for a valid marriage, there are still practices that occur outside these provisions, one of which is contract marriage, which does not meet the legal requirements in Indonesia. [2]

Contract marriage carries a number of consequences that differ from permanent marriage, where several important aspects of the husband-wife relationship may not be fulfilled. In contract marriage, there is no obligation for the husband to provide financial support, there are no inheritance mechanisms between the spouses, and in the practice of contract marriage, there is also no regulated divorce process, which complicates the situation, especially for women. The social construction of contract marriage in terms of gender shows that women often become victims. This practice is vulnerable to physical, sexual, and emotional violence, including among underage women. [3] For example, in Puncak, West Java, nearly half of the girls are trapped in the practice of contract marriage, where many of them are forced to engage in sexual relationships that are illegal according to the law, considering that the minimum age for marriage for women is 16 years according to the Marriage Law of 1974. This is particularly concerning, especially since West Java is a province with a high rate of trafficking cases. [4]

In addition, another issue that arises from contract marriage is when such relationships result in children. When the contract marriage period ends, the women involved often become single parents with unclear status for the children. With the increasing prevalence of contract marriage, this practice has also become a business involving syndicate networks and human trafficking as well as baby trafficking. The existing social construction indicates that contract marriage, which is considered legitimate and acceptable by some segments of society, actually sacrifices the weaker parties: children and women. In many cases, women and children receive inadequate legal protection, even when they become victims of trafficking. Therefore, it can be concluded that the practice of contract marriage is more beneficial to men, while women experience profound suffering.

The background for the increasing practice of contract marriage in various provinces in Indonesia over the past five years is due to several factors, including economic reasons, lustful motives, and weaknesses in the existing legal system. In the village of Pelemkerep, Mayong District, Jepara Regency, for example, low levels of women's education, misinterpretation of religious teachings, and unfavorable economic conditions create a culture of materialism that

prioritizes financial welfare above all else. For women, the reason for engaging in contract marriage often lies in the desire to improve economic welfare for themselves and their families. Meanwhile, for men, the primary purpose of contract marriage is to fulfill their biological needs in a way that is perceived as safer. In addition to Jepara, several other regions in Indonesia, such as Puncak-Bogor, Pasuruan, and Singkawang, are also known as places that provide contract marriage services. In practice, the women involved often have no choice in selecting their partners because there are brokers or third parties who arrange this contract marriage process.

To date, the legal system in Indonesia lacks clear provisions regarding civil and criminal sanctions related to contract marriage practices. The existence of contract marriage, which is often viewed as an informal relationship without a strong legal foundation, creates a regulatory vacuum. This has implications for legal uncertainty for the parties involved. Most existing regulations, such as Law No. 1 of 1974 on Marriage, focus more on regulating formal and legally valid marriages, without leaving room to address the consequences of contract marriages that can significantly impact individuals, especially women and children.

Civil sanctions in contract marriage are crucial to provide protection for the injured parties. Without strict sanctions, this practice risks placing individuals, particularly women, in vulnerable positions susceptible to exploitation and rights violations. For example, in situations where contract marriage leads to violence or abandonment of responsibilities, women have no legal recourse to claim their rights or seek compensation. This also has the potential to create long-lasting social stigma against women involved in contract marriage, as they are perceived as lacking social legitimacy compared to couples who are officially married. Therefore, clear regulations are needed to establish sanctions that can address violations occurring in contract marriage practices.

On the other hand, criminal sanctions are also an important element in law enforcement related to contract marriage. The ambiguity surrounding the legal status of contract marriage has the potential to nurture illegal practices, such as trafficking or human trade, which often involve women and underage children. Without criminal sanctions to penalize those violating the law in contract marriage practices, the syndicate networks involved in human trafficking will become increasingly difficult to tackle. This underscores the necessity for law enforcement officials to act against harmful contract marriage practices. By imposing criminal sanctions, the law not only protects individuals from violations but also serves as a deterrent effect to prevent similar actions in the future. In this context, the urgency to fill the legal vacuum

regarding contract marriage becomes increasingly evident. The government and legislative bodies need to formulate comprehensive laws to regulate contract marriage and establish appropriate sanctions, both civil and criminal. With clear regulations in place, it is hoped that better legal protection will be provided for all parties involved and that the risk of abuse and rights violations, particularly for women and children, will be reduced.

2. METHOD

The normative juridical research method is an approach that focuses on the analysis of written legal norms contained in applicable legislation. In this study, the researcher explores and investigates legal provisions related to the discussed topic, in this case, contract marriage. This approach involves an in-depth examination of various legal sources, including laws, government regulations, as well as relevant doctrines and jurisprudence. The aim is to identify and analyze legal gaps and the implications of existing legal provisions, as well as to evaluate whether current laws adequately protect individual rights, especially those of women and children, in the context of contract marriage. With this approach, the researcher is expected to provide policy recommendations based on solid normative analysis.

The legislative and analytical approaches complement each other in this research. The legislative approach is used to explore the legal framework governing marriage and contract marriage by referring to various relevant laws, including the Marriage Law and other regulations. Meanwhile, the analytical approach is used to analyze and evaluate the application of these norms in practice and their impact on society. In this context, the researcher can identify problems arising from the lack of clear regulations regarding contract marriage, as well as investigate the social and legal impacts experienced by individuals involved.

3. RESULT AND DISCUSSION

Legal and Social Consequences of Contract Marriage Implementation in Indonesia

According to Article 1 of Law Number 1 of 1974 on Marriage, marriage is defined as a bond of body and soul between a man and a woman aimed at forming a happy and lasting family, based on the belief in God Almighty. [5] In this context, marriage is not merely a formal bond, but also encompasses spiritual and emotional goals aimed at creating a loving and mutually affectionate relationship. Marriage is also understood as a contract that legalizes social interactions and establishes the rights and obligations between husband and wife. [6] Several experts, such as Prof. Ibrahim Hosen and Nasharuddin Thaha, further add that marriage

is a mutually binding agreement carried out by fulfilling certain conditions in accordance with both religious and state regulations. The primary objective of marriage, as stipulated in the Marriage Law, is to establish a happy and lasting household, which is expected to be achieved through the implementation of marriage that is civilized and in accordance with religious teachings. [7]

A marriage is considered valid if it meets certain requirements, namely: it is conducted in accordance with the religion and beliefs of both parties, carried out in an orderly manner according to Islamic law for those who are Muslim, and registered in accordance with legal regulations, as stipulated in Article 2 of Law Number 1 of 1974 concerning Marriage. The registration of marriage is very important, as it serves to ensure order and prevent harm to the parties involved, as well as to prevent irresponsible marriage practices. If a marriage is not registered, the husband and wife are not legally recognized as married, which can complicate matters of proof. The requirements for marriage are outlined in Articles 6 to 12 of that law, which include the consent of both parties, parental or guardian permission, age limits, the absence of marriage prohibitions, and the absence of ties to another marriage. These requirements are essential to ensure that the marriage is valid and can create rights and obligations for the couple during and after the marriage takes place. [8]

The validity of marriage heavily depends on the fulfillment of specific requirements and pillars that have been established. In Indonesian positive law, the pillars of marriage are regulated in Article 14 of the Compilation of Islamic Law (KHI), which includes the presence of the prospective husband, prospective wife, marriage guardian, two witnesses, and the execution of the *ijab* and *kabul* (offer and acceptance). Although the marriage law and KHI regulate the pillars of marriage, neither explicitly mentions the types or forms of marriage that are prohibited. However, Articles 39 to 44 of the KHI provide provisions regarding the prohibitions and annulment of marriage. Islamic law itself details the types of marriages considered invalid, such as *nikah mut'ah*, *nikah syigar*, *nikah muhallil*, and marrying a woman who is in her *iddah* (waiting period).

Nikah mut'ah, which means marriage for the purpose of enjoyment or pleasure, is recognized as a temporary marriage. In practice, this type of marriage does not aim to perpetuate lineage but rather to satisfy the fleeting desires and pleasures of the partners. Scholars from various schools of thought have differing views on *nikah mut'ah*. The scholars of the Maliki, Shafi'i, and Hanbali schools consider it equivalent to *nikah mu'qqat* (temporary marriage), while the Hanafi scholars require the term "*mut'ah*" to be mentioned in the marriage

contract. The fundamental principle of nikah mut'ah is the time limitation, which is deemed contrary to the objective of marriage as outlined in Article 1 of the Marriage Law, which is to establish a happy and lasting family.

Contract marriage practices in Indonesia share similarities with nikah mut'ah, as both involve a specific time limitation in their implementation. According to Fuad M. Fahrudin, contract marriage is a type of marriage intended for a limited time, with a duration that can range from several days to several years, depending on the agreement between both parties. This agreement must be made without coercion or pressure from any party. Thus, contract marriage tends to reflect the principles found in nikah mut'ah, emphasizing the time stipulation in a marriage, albeit with potentially different purposes and impacts in social and legal contexts.

The legal vacuum regarding contract marriage in Indonesia leads to significant legal uncertainties. This ambiguity arises from the absence of criminal law norms that explicitly regulate sanctions against those who facilitate contract marriages. Without clear regulations, society may begin to perceive contract marriage as an acceptable practice that does not violate moral, religious, or social norms. This has the potential to encourage the proliferation of contract marriage, which is increasingly thriving in Indonesia, without adequate legal measures to address it.

To date, contract marriage is not regulated within the Indonesian Penal Code (KUHP) or in the Marriage Law. Furthermore, there is currently no law that specifically prohibits contract marriage. As a result, this legal vacuum creates a situation where women, who often become victims in contract marriage practices, do not receive adequate protection. The author's thesis proposes that those facilitating contract marriages could face criminal sanctions due to the lack of clear regulations to protect women from the negative impacts of contract marriages. Additionally, there are several articles in the Marriage Law that are considered discriminatory and detrimental to women, exacerbating the contract marriage phenomenon.

One article that warrants evaluation is Article 1, which defines marriage as a spiritual and physical union between a man and a woman with the aim of forming a happy and lasting family. This definition, according to the author, is influenced by the religious interpretation of marriage in Islam, where the elements of ijab and qabul are determinants of the legality of marriage. In practice, the ijab is often represented by a male guardian, leading to the transfer of responsibility from the guardian (father) to the husband. This creates gender inequality, where women remain in a subordinate position. Therefore, it is important to assert that marriage

should be viewed as a binding contract or agreement between two equal parties—men and women—with the same terms and agreements.

Article 2 of the Marriage Law also exhibits shortcomings in its understanding of what constitutes a valid marriage. This article states that a marriage is deemed valid if conducted in accordance with the religious laws of the respective parties and registered according to applicable regulations. However, this understanding is often misinterpreted by the public, with many believing that marriage is only valid if conducted according to religious law, even if it is not registered. This has the potential to increase the number of unregistered contract marriages, as society does not understand that without official registration, the marriage is not recognized by the state. It would be advisable to revise this article to state that a marriage is only valid if conducted according to religious law and must be registered, thereby helping society understand the importance of registration in preventing contract marriages.

The differences in the minimum age limit for marriage between men and women regulated in Article 7 also reflect gender imbalances. This article stipulates that men must be 19 years old, while women are only required to be 16. This discrepancy fosters the perception that men should be older and stronger, while women are viewed as the weaker sex. This has the potential to lead to discriminatory treatment of women, including within households. Considering that the minimum age of 16 for women contradicts broader provisions in the Child Welfare Law and International Conventions on the Rights of the Child, which establishes a minimum age of 18, it is essential to equalize the minimum marriage age for both genders. By adjusting the minimum age to 18, women would be afforded a better opportunity to complete their education, which in turn could reduce the number of contract marriages often caused by low educational levels.

Contract marriages in Indonesia result in significant legal consequences, particularly concerning the legal status of the marriage, the rights and obligations of spouses, and the divorce mechanisms. The legal status of contract marriages is not officially recognized within the Marriage Law, placing individuals involved in a vulnerable and unprotected position. The rights and obligations that should exist within a marriage, such as support, inheritance rights, and child custody rights, are not recognized in the context of contract marriages. Consequently, women, who are often the more disadvantaged party, lack adequate legal protection regarding their rights. Furthermore, the ambiguity surrounding the divorce mechanisms in contract marriages complicates the individuals' ability to legally terminate the relationship, potentially leading to serious emotional and psychological issues. The absence of legal sanctions, both

civil and criminal, against those facilitating contract marriages also adds to the complexity of this issue, exacerbating the situation for those trapped in legally unrecognized relationships.

On the social side, contract marriages impact societal perceptions and the conditions of the individuals involved, especially women. Society often views contract marriages as unofficial practices, which can affect individuals' images within the community. For women, contract marriages frequently lead to risks of physical, emotional, and sexual violence, as they lack adequate legal protection. Family dynamics also undergo changes, as contract marriages can create instability within the family structure and trigger prolonged conflicts. Economic factors often serve as the primary motivation for many individuals to engage in contract marriages, where financial pressure may compel them to make detrimental decisions.

Efforts to Fill the Legal Vacuum in Contract Marriage Regulations in Indonesia to Provide Better Protection for Involved Parties

The legal vacuum in the regulation of contract marriages in Indonesia is an increasingly urgent issue to address, given that this practice lacks a clear legal foundation and can have severe consequences for the parties involved, particularly women and children. Even though existing marriage laws do not specifically regulate contract marriages, this phenomenon continues to grow and often occurs within society. The lack of regulation creates legal uncertainty, resulting in significant social and economic impacts, where women and children frequently become victims of unfavorable conditions. Therefore, it is essential to make efforts to fill this legal vacuum through policy reform and strengthening legal protections to ensure that all parties involved in marriages have rights and obligations that are recognized and protected by law.

One important step in the law enforcement regarding contract marriages is the need to revise Law No. 1 of 1974 concerning Marriage. The current regulation does not specifically cover the issue of contract marriage, potentially leading to legal doubts and inadequate protection for the parties involved. Consequently, a revision of this law is necessary to accommodate various forms of marriage, including contract marriages. This reformulation should include a clearer definition of temporary marriage and regulate the mechanisms and requirements that must be met in its implementation. For instance, establishing a clear duration, procedures, and time limits for contract marriages could help avoid abuse and ensure that all parties understand the legal consequences of the marriage. Moreover, this regulation should also take into account the rights and obligations of each party to ensure fairness and balance in marital relationships.

In addition to reformulating the Marriage Law, drafting an Anti-Contract Marriage Bill (RUU) becomes a crucial step towards creating more effective legal protection for individuals involved in this practice. This bill should specifically regulate the prohibitions and sanctions against contract marriages, aiming to address the detrimental phenomenon, particularly for women and children. The bill must set forth clear sanctions for those engaging in contract marriages, both civilly and criminally, to serve as a deterrent and prevent abuses. Additionally, it should include provisions for the protection of the harmed parties, such as access to the courts and the fulfillment of their rights. For instance, regulations concerning child custody and inheritance rights for children born from contract marriages are essential to provide justice and legal certainty for them. With this bill, it is hoped that a safer and more supportive legal environment for individuals involved in marriages will be created, while also reducing social stigma and ensuring that all marriages are conducted with respect for human rights.

Protecting women and children from the negative impacts of contract marriages is crucial, considering that such situations often lead to serious consequences, including violence, exploitation, and the loss of basic rights. Therefore, specific protection policies must be designed to effectively address these challenges. These policies should include mechanisms to identify and protect women and children who are at risk or have become victims of contract marriages. One important step in this policy is to improve access to legal and counseling services. By providing appropriate legal assistance, victims can more easily demand their rights and seek justice while avoiding detrimental situations in the future. Furthermore, counseling services should be provided to help women and children process the trauma they may have experienced and to offer the emotional and psychological support needed to recover from negative experiences associated with contract marriages.

In addition to specialized protection policies, the provision of social services is a crucial step in assisting women and children involved in contract marriages. These social services can include temporary shelters for those who feel unsafe or threatened in their environments, as well as psychological support to aid in their recovery process. Temporary shelters are vital for providing physical protection to women and children, especially if they face risks of domestic violence or exploitation after engaging in contract marriages. Additionally, psychological support, such as individual or group therapy, can help them cope with trauma and rebuild their self-esteem. The government and non-governmental organizations (NGOs) need to work together to provide these services, enabling them to reach more individuals in need of assistance. Moreover, community awareness campaigns are also essential to educate the public

about the negative impacts of contract marriages and to encourage support for victims. With comprehensive protection policies and adequate social services, it is hoped that women and children can be shielded from the harmful practices of contract marriages and have the opportunity to live better and safer lives.

Strengthening the oversight system regarding contract marriage practices is a vital step in addressing a phenomenon that poses potential harm to many parties, especially women and children. Stricter and more transparent oversight needs to be conducted through official institutions, such as the Population and Civil Registration Office (Dukcapil) and other relevant agencies. This includes tightening marriage registration processes so that all marriages, both official and unofficial, are accurately recorded and can be monitored. With a better registration system, authorities can identify contract marriage practices and take preventive measures before the situation worsens. Transparency in marriage registration will also ease the public's ability to report suspicious or illegal practices while raising public awareness regarding the importance of official marriage registration.

Training and education for field officers are also critical to ensure that they understand the regulations and legal implications of contract marriages. In this way, officers can detect indications of unauthorized contract marriages and take necessary steps to protect individuals who may become victims. Furthermore, strengthening the oversight system could involve cooperation between the government and non-governmental organizations to provide support in monitoring, educating the public, and protecting vulnerable parties.

Effective law enforcement must also be accompanied by the establishment of strict sanctions for those involved in organizing contract marriages. These sanctions need to be defined civilly and criminally to create a deterrent effect and prevent the recurrence of similar practices. Civil sanctions could include fines or compensation obligations to the aggrieved party, while criminal sanctions could involve imprisonment for those who actively facilitate or engage in detrimental contract marriage practices. With clear and severe sanctions in place, it is expected that individuals and groups intending to engage in contract marriages will think twice before doing so, as they become aware of the legal risks they may face.

Additionally, it is also necessary to formulate regulations that clearly define what is meant by contract marriage and the limitations that must be considered. This aims to avoid ambiguities and ensure that all parties understand the legal consequences of their actions. With a robust monitoring system and strict sanctions, it is hoped that a safer and more conducive climate will be created for individuals, particularly women and children, to receive the legal

protection they need. Consistent implementation of these two aspects will greatly assist in enforcing the law and protecting individual rights in society.

4. CONCLUSION

Contract marriage in Indonesia demonstrates that the legal vacuum is one of the main issues hindering the protection of individual rights, particularly for women and children. The ambiguity of the existing regulations creates legal uncertainty that allows contract marriage practices to proliferate unchecked. In the absence of clear provisions in the Marriage Law or other regulations governing contract marriages, many individuals find themselves trapped in detrimental situations where their rights and obligations are not recognized. This has the potential to lead to broader social problems, including domestic violence, exploitation, and the marginalization of women and children, who are the most vulnerable groups in this context. Without concrete efforts to address this legal vacuum, the negative consequences of contract marriage will continue, harming many parties and exacerbating existing gender injustices.

Therefore, comprehensive legal reform is essential to fill the existing legal void. A revision of Law No. 1 of 1974 concerning Marriage should be undertaken to create a clearer definition of marriage, including regulations regarding contract marriage and protections for the parties involved. The drafting of specific laws banning contract marriage, along with sanctions for violators, must also be prioritized. With a strong and clear legal framework in place, it is hoped that better protection for women and children can be provided, that the practice of contract marriage can be reduced, and that public awareness of the importance of legally recognized marriage can be promoted. Additionally, this reform will help create gender equality in the context of marriage, where the rights and obligations of spouses are recognized fairly and equally. Thus, these measures are expected to foster the emergence of a more just and equitable society for all individuals.

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