

## Doctrinal Analysis of Effects on Second Marriage Conducted by The Fake Documents (Case Study Court Decision No 67 / Pid.B / 2018 / PN.Kds)

Bayu Enggar Pramono<sup>1</sup> and Akhmad Khisni<sup>2</sup>

Abstract. The goal which achieved in this research is to know the legal consequences against criminal acts, what factors that affect crime, legal considerations the judge in meting out criminal sanctions against the perpetrators of criminal acts do a second marriage that is done on the basis of false documents (Case Study Court Decision No. 67/Pid. B/2018/PN. Kds).

This research is the legal research which using Empirical Juridical approach or also called as the Juridical Sociological. According to this study, the level specified as descriptive research analytical. Data collection can be done using primary and secondary sources. Methods of data analysis used in this study is a qualitative analysis.

The results of this research that is due to laws against the crime of second marriage dropping the criminal to the defendant therefore with imprisonment for 6 (six) months of the factors that influence crime who do the second marriage with the fake document. *First*, not given the permission of the first wife. *Second*, a conflict in the family. *Third*, still the presence of the community who do marry. Legal consideration of judges in meting out criminal sanctions against the perpetrators of the crime do the second marriage was appropriate i.e. with satisfy all the elements of the claim i.e. claims sole Article 279 paragraph 1 to 1 of the KUHP.

Keyword: A Criminal Offence; The Marriage; The Judge's Consideration

### 1. Introduction

Marriage law which contained in the Marriage Law (Act No. 1 of 1974) and Islamic Law Compilation (KHI) also adheres to the permissibility of polygamy, although limited to four wives. Polygamy is the marriage between a man with several women. Islam allows polygamy, but prohibit polyandry, the marriage of a woman with several men.<sup>3</sup> While the conditions that must be met to be able to practice polygamy listed in Article 5 (1) of the Act No. 1 of 1974 on Marriage Law.

Identity fraud will not occur if the marriage conducted by following the applicable procedures. A good marriage is marriages between men and women the same belief, character and purpose, in addition to love and sincerity. Under the auspices of the integration of the life of husband and wife will be peaceful, full of love and affection, the family will be happy and children will prosper. In the view of Islam, family life as it would not be perfectly realized unless the married couple cling to implement the teachings of Islam. If the two are different religions, then there will be difficulties in the family and in the marriage licensing process would be complicated. In addition,

---

<sup>1</sup> Student of Master of Law, Universitas Islam Sultan Agung Semarang and Police Member Officer , e-mail: [bayuenggar467@gmail.com](mailto:bayuenggar467@gmail.com)

<sup>2</sup> Lecturer of Faculty of Law UNISSULA Semarang

<sup>3</sup>Sudarsono, 1991, *Hukum Kekeluargaan Nasional*, PT Rineka Cipta, Jakarta, p. 119-120

also will encounter difficulties in the implementation of the worship, children's education, the fostering of religious traditions, and others.<sup>4</sup>

Fake marriage certificate/document or at least real or fake (asphalt) is almost certainly. The document issued under a false identity or identity card, because if it is known that a husband in marital status, should KUA officials can not enter into marriage without the permission of the court and with the permission of first wife. If true identity fraud occurred or is actually the prince or KUA officials that determine the actual status of a husband but still enter into marriage, the prince could be prosecuted in accordance with article 45 of Act No. 1 of 1974, and can also be prosecuted on charges of followed do forgery as defined in article 266 of the Criminal Code.

Criminal case falsification of documents in the jurisdiction of Police of the Kudus, the criminal action is motivated by the marriage relationship. Law enforcement in violation of the law of marriage, especially marriage registration, clearly has not been set on the size and enforcement mechanisms applicable law. The extent to which the active role of agencies involved in law enforcement for violations of the Marriage Act. Because the parties are harmed due to the second pernikahan practice, usually members of the nuclear family consisting of a couple and their offspring. So even if the aggrieved party is very unlikely that the legal issues will complain to the authorities.

As stated in the (Case Study Court Decision No 67 / Pid.B / 2018 / PN.Kds) There has been a criminal act committed by the suspect Sulaiman Bin Abdul Rohim, proven legally and convincingly held a second marriage while knowing that the marriage has there been a legitimate barrier with forgery marriage documents<sup>5</sup>.

Problem formulation concerning the legal consequences of the offenses did a second marriage that is based on a false document (Case Study Court Decision No 67 / Pid.B / 2018 / PN.Kds) What factors are affecting the criminal offense did a second marriage that is based on documents false (Case Study Court Decision No 67 / Pid.B / 2018 / PN.Kds) legal consideration of judges in imposing criminal sanctions against perpetrators of criminal acts perform second marriages based on false documents (Case Study Court Decision No 67 / Pid.B / 2018 / PN.Kds)

Research purposes, namely: To determine the legal consequences of the offenses did a second marriage that is based on a false document (Case Study Court Decision No 67 / Pid.B / 2018 / PN.Kds) To determine the factors that influence the crime of a second marriage is based on a false document (Case Study Court Decision No 67 / Pid.B / 2018 / PN.Kds) To know the legal reasoning of judges in imposing criminal sanctions against perpetrators of criminal acts perform second marriages based on false documents (Case Study Court Decision No 67 / Pid .B / 2018 / PN.Kds)

## Research Methods

This research is using the empirical juridical approach or commonly referred to as the Juridical Sociological.<sup>6</sup> Empirical juridical approach (socio-juridical) mentioned in this thesis is used to analyze qualitatively about the protection of crime victims of domestic

---

<sup>4</sup> Ahmad Sukardja, 2008, *Problematika Hukum Islam Kontemporer*, Pustaka Firdaus, Jakarta, p 9

<sup>5</sup> Court Decision No. 67 / Pid.B / 2018 / PN.Kds

<sup>6</sup> Mukti Fajar ND dan Yulianto Achmad, 2010 *Dualisme Penelitian Hukum Normatif & Empiris*, Pustaka Pelajar, Yogyakarta, p.47.

violence. The term implies analytical classify, correlate and compare aspects of the law relating to criminal sanctions perpetrators of unregistered marriages.

Of material and then performed the analysis of the data of the law against the perpetrators of criminal sanctions for unregistered marriages (Case Study on Kudus Police).

## **2. Results And Discussion**

### **2.1. Law Effects On Second Marriage Conducted By The Fake Documents (Case Study Court Decision No 67 / Pid.B / 2018 / PN.Kds)**

Based on the description in question, the prosecution in this case to the provisions of the relevant Act requires that the Chief Justice of the Kudus District Court to hear this case check and decide:

- The defendant stated Sulaian bin Abdul Rohim mentioned above, proven legally and convincingly guilty of committing a crime to hold a marriage while knowing that the marriage there is a barrier that is legitimate, as in a single indictment.
- Convict the defendant therefore by imprisonment for six (6) months
- Tela detention sets a defendant lived entirely deducted from the sentence imposed
- Establish defendant remained in detention
- Impose on the defendant to pay the court fee of Rp. 2.000,- (two thousand rupiah)

Based on the position in the case Number 213 / Pid.B / 2014 / PN Pal. defendant indicted by the public prosecutor to form a single indictment, namely Article 279 paragraph 1 to (1) of the Criminal Code.

### **2.2. The Factors Are Affecting The Criminal Offense Did Second Marriage Based On A Fake Document (Case Study Court Decision No 67 / Pid.B / 2018 / PN.Kds)**

First, not given permission from the first wife. Permit is a requirement that must be met by the husband who wants to get married again, but the majority wife would not give permission because they think do not want to be second because the impact on the income that will be received as well as the attention that must be reduced. To do marriage second, third and so on (polygamy) there are several requirements that must be met, in accordance with the terms of polygamy described in Article 5 of Act No. 1 of 1974 which must obtain permission and approval from his previous wife.

Second, the conflict in the family, for example, lack of communication, due to the distance of the work so rarely meet. Which has resulted in a husband and wife be the cause of one of the couples prefer to seek comfort outside. In this case the husband will look for comfort with another woman that eventually led to a husband's infidelity and consequently prefer another woman to make a second wife

Third, there are still people who do the second marriage, because no one wants to take strong action. In Government Regulation No. 9 of 1975 on the implementation of Act No. 1 of 1974 About Marriage Article 45 states: (1) Unless otherwise specified in the legislation in force, then: a. Anyone who violates the provisions set forth in Article 3, paragraph 10 (3), 40 of this Government Regulation be punishable by a maximum fine of Rp. 7.500 (seven thousand five hundred rupiah); b. Registrar employee who

violates the provisions set forth in Article 6, 7, 8, 9, 10 paragraph (1), 11, 13, 44 of this Government Regulation punished with imprisonment for a duration of 3 (three) months or a maximum fine of Rp. 7.500 (seven thousand five hundred rupiahs).

In theory *Receptio complexu* introduced Christian Willem Lodewijk Van Den Berg (1823-1927), which states, Islamic law has been accepted in Indonesian society as a whole. Furthermore, Van Den Berg stated, Islamic law has been accepted in family law and inheritance law of Islam with few irregularities.<sup>7</sup> *Nikah Mut'ah* (contract marriage) and a second mating (mating under the arms) become part of family law. However, the deviation of understanding *Nikah Mut'ah* and the second marriage has not been a deep discussion.<sup>8</sup>

According Moeljatno stated that the offense is prohibited and punishable by, against anyone who violates the ban. The act must also be perceived by the public as an obstacle intercommunication system is aspired by the people.<sup>9</sup>

According to Andi Hamzah in his book "*Asas-asas Hukum Pidana*" (Principles of Criminal Law) provides a definition of the offense is an act or acts forbidden and threatened with punishment by the Act (criminal).<sup>10</sup>

### **2.3. Judge Considerations On Dropped The Sanctions Against The Criminal Who Doing Second Marriage Based on Fake Documents (Case Study Court Decision No 67 / Pid.B / 2018 / PN.Kds)**

Considering that the elements of the panel of judges to consider the following:

- Whoever element:

Considering that it is the one who is the person or people as criminals who are responsible and accountable for his actions Considering that the hearing the public prosecutor has presented the defendant Sulaiman bin Abdul Rohim whose identity has been investigated by the judge in the hearing were consistent with the identity sebagaimana letter indictment Public Prosecutor who was read at the beginning of the trial and confirmed by the defendant, so that there were no errors person (error in Persona) Considering that thus elements of one who has fulfilled and proven under the law.

- Elements hold a marriage while knowing that the marriage or marriage-marriage has there been a hindrance thereto:

Considering that it is based on facts which decomposes above law as connected with criminal offenses Element 2 quo Judge found right on. On Monday, March 3, 2014 Defendant tanggal hold a wedding or marriage with Thérèse Witness Tri Handayani at the District Office of Religious Uursan Jekulo Kudus District as a

---

<sup>7</sup>Linda Firdawaty, "*Perlindungan Hukum Bagi Anak Karena Perkawinan Yang Fasakh Karena Melanggar Larangan Perkawinan*, Jurnal kajian Hukum Al-Adalah Vol. 7 (1) June 2008, IAIN Raden Intan Lampung, p. 28-36

<sup>8</sup>Abdul Ghofur Anshori, "*Orientasi Nilai Filsafat Hukum Keluarga; Refleksi Undang-Undang Nomor 1 tahun 1974 tentang Perkawinan*, Jurnal Mimbar Hukum 18 (1) February 2006, FH UGM Yogyakarta, p. 1-16

<sup>9</sup>Adami Chazawi, 2002, *Pelajaran Hukum Pidana Bagian 1; Stelsel Pidana, Teori-Teori Pemidanaan dan Batas Berlakunya Hukum Pidana*, PT. Raja Grafindo, Jakarta, p. 72.

<sup>10</sup> *Ibid*, p. 75.

marriage certificate No. 0111/11 / III / 2014. No. KK.11.19.7 / PW.01 / 162/2015 dated December 17, 2015 were drawn up and signed by the Head of the District KUA SHI Jekulo H. Noor Kholis Nip. 19601204 198703 1003). The defendant did not obtain permission from the witness regarding Endang Susilowati married to Witness by Theresia Tri Handayani, thus according to the judges of this element has been fulfilled.

Whereas since all the elements of Article 279 paragraph 1 to-1 of the Criminal Code have been fulfilled, the defendant shall be deemed to have proven legally and convincingly guilty of committing a criminal offense as charged in a single indictment Considering that during the trial, the judges did not find things can eliminate criminal liability, either as a justification or an excuse, the defendant should be held accountable for his actions

Whereas since the defendant mapu responsible, it must be convicted and sentenced considering that in this case against the accused has been subjected to arrest and detention were unlawful, then the arrest and detention period shall be deducted from the sentence imposed

Whereas since the defendants were arrested and the detention of the accused is based on sufficient grounds, it is necessary to set out for the accused to remain in detention considering that to convict the accused.

### 3. Closing

#### 3.1. Conclusion

- Law Effects On Second Marriage Conducted By The Fake Documents (Case Study Court Decision No 67 / Pid.B / 2018 / PN.Kds) origins of the marriage was known that existing marriages became legitimate impediment for him under Article 279 Paragraphs 1 and 2 of the Criminal Code in accordance with both legal facts witness testimony and testimony from the accused who are considered physically and mentally healthy, there are no mental disorder that is considered unable to account for his actions.
- The Factors Are Affecting The Criminal Offense Did Second Marriage Based On A Fake Document (Case Study Court Decision No 67 / Pid.B / 2018 / PN.Kds). First, not given permission from the first wife. Permit is a requirement that must be met by the husband who wants to get married again, but the majority wife would not give permission because they think do not want to be second because the impact on the income that will be received as well as the attention that must be reduced. Second, the conflict in the family, for example, lack of communication, due to the distance of the work so rarely meet which has resulted in a husband and wife be the cause of one of the couples prefer to seek comfort outside. In this case the husband will look for comfort with another woman that eventually led to a husband's infidelity and consequently prefer another woman to make a second wife Thirdly, there are still people who do marriage Second, because no one wants to take strong action. In Government Regulation No. 9 of 1975 on the implementation of Act No. 1 of 1974 About Marriage Article 45 states: (1) Unless otherwise specified in the legislation applicable

- Judge Considerations On Dropped The Sanctions Against The Criminal Who Doing Second Marriage Based on Fake Documents (Case Study Court Decision No 67 / Pid.B / 2018 / PN.Kds). accordance with the fulfillment of all the elements of the single indictment charges Article 279 Paragraph 1 to 1 of the Criminal Code, as well as witness testimony corresponds with each other plus the judge's conviction. In addition the judge in the criminal sanctions also consider things that can alleviate and burdensome for the defendant. The penalty imposed was appropriate even though much of the purpose of punishment which caused fear and plentiful effect for 67 actors themselves let alone crime is committed by offenders classified as crimes often occur diruang found the public sphere

### 3.2. Suggestion

Suggestions in this study are as follows:

- The judges should be able to really consider the impact of actions a person who commits an offense is often the case plus the deed is done by the community.
- It is expected that the government and the community play an active role in creating a conducive atmosphere in the community such as providing legal counseling environment of the community as a preventive measure
- It is hoped that the supervision would truly by KUA agencies that do not easily give someone permission to remarry while before the person has had a wife or husband

### 4. Bibliography

- [1] Adami Chazawi, 2002, *Pelajaran Hukum Pidana Bagian 1; Stelsel Pidana, Teori-Teori Pemidanaan dan Batas Berlakunya Hukum Pidana*, PT. Raja Grafindo, Jakarta.
- [2] Ahmad Sukardja, 2008, *Problematika Hukum Islam Kontemporer*, Pustaka Firdaus, Jakarta.
- [3] Linda Firdawaty, *Perlindungan Hukum Bagi Anak Karena Perkawinan Yang Fasakh Karena Melanggar Larangan Perkawinan*, Jurnal kajian Hukum Al-Adalah Vol. 7 (1) June 2008, IAIN Raden Intan Lampung
- [4] Abdul Ghofur Anshori, "*Orientasi Nilai Filsafat Hukum Keluarga; Refleksi Undang-Undang Nomor 1 tahun 1974 tentang Perkawinan*", Jurnal Mimbar Hukum 18 (1) February 2006, FH UGM Yogyakarta
- [5] Mukti Fajar ND dan Yulianto Achmad, 2010, *Dualisme Penelitian Hukum Normatif & Empiris*, Pustaka Pelajar, Yogyakarta
- [6] Sudarsono, 1991, *Hukum Kekeluargaan Nasional*, PT Rineka Cipta, Jakarta.
- [7] Act No. 1 of 1974 on Marriage
- [8] Compilation of Islamic Law
- [9] Criminal Code
- [10] Government Regulation No. 9 of 1975
- [11] Court Decision No 67 / Pid.B / 2018 / PN.Kds