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### Contract Marriage in Indonesia Between Legality, Morality and Social Reality

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#### Article

#### Abstract

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Kawin kontrak adalah fenomena kontroversial di Indonesia yang melibatkan pernikahan dengan jangka waktu tertentu berdasarkan perjanjian antara kedua pihak. Praktik ini sering kali diwarnai oleh kesepakatan finansial dan dianggap sebagai solusi pragmatis untuk kebutuhan ekonomi atau sosial. Namun, kawin kontrak memunculkan berbagai isu hukum dan moralitas, serta menghadapi berbagai tantangan dari sudut pandang sosial. Secara hukum, kawin kontrak bertentangan dengan Agama dan Undang-Undang Perkawinan di Indonesia. Oleh karena itu, legalitas kawin kontrak sering diperdebatkan dan dianggap pelanggaran hukum atau bahkan perdagangan manusia. Dari sudut pandang moral, kawin kontrak sering dilihat sebagai eksploitasi terhadap perempuan. Akan tetapi, harus diakui fenomena ini tidak mudah untuk diberantas secara langsung, akan tetapi penertibannya dapat dilakukan secara bertahap. Untuk itu hasil kajian ini merekomendasikan perlu pendekatan hukum, keagamaan, juga pendekatan ekonomi yaitu perlu adanya pelatihan-pelatihan keterampilan, khususnya yang menunjang bidang sektor pariwisata, sehingga dapat memberikan mereka kompetensi dan peluang untuk beralih profesi, dengan bekerja di bidang lain yang legal.

**Kata Kunci:** Kawin Kontrak, Legalitas, Realitas Sosial

*Contract marriage is a controversial phenomenon in Indonesia that involves marriages with a specific time period based on an agreement between the two parties. The practice is often coloured by financial agreements and is considered a pragmatic solution to economic or social needs. However, contract marriages raise various legal and morality issues, and face various challenges from a social perspective. Legally, contract marriages are contrary to Religion and the Marriage Law in Indonesia. Therefore, the legality of contract marriages is often debated and considered a violation of the law or even human trafficking. From a moral standpoint, contract marriages are often seen as exploitation of women. However, it must be recognised that this phenomenon is not easy to eradicate directly, but its curbing can be done gradually. For this reason, the results of this study recommend the need for legal, religious, and economic approaches, namely the need for skills training, especially those that support the tourism sector, so as to provide them with competence and opportunities to switch professions, by working in other legal fields.*

**Keywords:** Contract Marriage, Legality, Social Reality

## INTRODUCTION

Contractual marriage is a phenomenon that has long been a topic of debate in Indonesia. The term refers to the practice of marriage that lasts for a certain period of time, with an agreement that often involves material or financial compensation. This practice is usually regulated through a written agreement that determines the duration and terms of the marriage relationship. Although often seen as a form of exploitation of women, contractual marriage is also seen by some as a pragmatic solution to certain economic or social needs.<sup>1</sup>

The legal controversy surrounding contract marriages lies in the debate about the legality and morality of the practice. On the one hand, the Indonesian Marriage Law requires that marriages must be based on mutual consent and are intended to last a lifetime. On the other hand, contract marriages are often considered a legal form of temporary relationships that are not in line with prevailing legal and moral norms. The question of whether contract marriages can be considered legal, or whether they are actually a form of human trafficking in disguise, is a key issue in this discussion.<sup>2</sup>

Contractual marriage, the practice of marrying for a specified duration and financial agreement, is a controversial issue in Indonesia. On the one hand, the practice is seen as exploitative of women. On the other hand, some see it as a pragmatic solution to economic or social needs. Legally, contractual marriage is contrary to the Marriage Law, which requires marriage to be based on consent and for life. In some areas, contractual marriage is socially accepted, albeit hidden. Poverty, lack of education, and gender inequality are key drivers. This reflects the social and economic complexities surrounding the phenomenon of contractual marriage, as well as the challenges faced in efforts to eradicate or effectively regulate the practice

In this paper, the legal and social aspects of contract marriage in Indonesia will be discussed in depth. This analysis is expected to provide a more comprehensive understanding of the reasons behind the existence and persistence of this practice, as well as offer perspectives on possible solutions that can be taken to overcome the problems that arise from it.

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<sup>1</sup> Siti Desi Hidayati, "Problematika Hukum Nikah Mut'ah Dalam Perspektif Hadis Mansukh," *Al-Mahkamah: Islamic Law Journal* 1, no. 1 (2023): 21–28.

<sup>2</sup> Zaitun Abdullah and Kunthi Tridewiyanti, "Penyalahgunaan Konsep Kawin Mut'ah Pada Praktik Kawin Kontrak," *Journal of Islamic Law Studies* 2, no. 1 (2021): 65–83.

## FOCUS OF PROBLEM

From the description in the background, the following problems are formulated:

1. How is the implementation of contract marriages that occur in the Puncak community of Bogor Regency?
2. How is the implementation of contract marriages related to the legality, morality and reality of social society?

## RESEARCH METHODS

The research method used in this journal is descriptive research. Descriptive research is a research method that describes the characteristics of the population or phenomenon being studied. So this one research method focuses mainly on explaining the object of research. So that it answers what events occur. This research is a type of Library Research, namely research whose data collection is carried out by collecting data from various literatures. The literature studied is not limited to books but can also be in the form of journals. The emphasis of library research is to find various theories, laws, propositions, ideas that can be used to analyze the problems being studied.<sup>3</sup>

## FINDING & DISCUSSION

### Literacy References

The fuqaha and scholars of the four schools of thought agree that the meaning of nikah or زواج is a contract or agreement that contains the meaning of the validity of sexual relations. Marriage is an agreement to legalize sexual relations and to continue the lineage. The use of the word nikah or nikah has two meanings. The connotation depends on the direction the word is intended (الكلام سياق). The sentence فلانة فلان نكح (so and so has married so and so), means to perform a marriage contract. However, if the sentence is زوجته فلان نكح (so and so has married so and so). It means to have sexual relations

Marriage or jima', according to its linguistic meaning, comes from the word الوطء, which means to have intercourse or have sexual intercourse. Marriage is a contract that contains the permission to have sexual intercourse with the word النكاح or التزويج, which means to have sexual intercourse. With this understanding, marrying a woman means essentially having intercourse with the wife and the word مناكحات means having intercourse with each other. Although the term

<sup>3</sup> Peter Mahmud Marzuki. Metode Penelitian Hukum. Jakarta: 2006

is not absolute because in Law Number 1 of 1974 and Government Regulation Number 9 of 1975 and the Compilation of Islamic Law, the word marriage or marriage is not used but the word marriage is used. This means that the meaning of marriage or marriage applies to all activities that are sexual intercourse. This is because the word marriage is Arabic, while the word marriage is a word that comes from the Indonesian language

In essence, the marriage contract is a firm and strong bond in human life and existence, not only between husband and wife and their offspring, but between two families. From the good relationship between the wife and her husband, love, this goodness is transferred to all the families of both parties so that they become integral in all the affairs of each other in carrying out goodness and preventing all evil. Apart from that, with marriage, a person will be protected from the destruction of his desires.<sup>4</sup>

Contractual Marriage, which is marrying for one day, one week, six weeks, one year, or whatever the agreement says. The four schools of thought agree that contractual marriage is forbidden. If the marriage contract mentions a time period, the contract becomes null and void. The relationship that is being married becomes an adulterous relationship. Contractual marriage has been forbidden by Islam with the following arguments from the Qur'an, Sunnah and Reason, as follow :

#### **a. Dalil Al-Qur'an**

Allah's Word in Surah Al-Maarij verses 29-31: This means bought slaves obtained in war with infidels, not purchased slaves obtained outside of war, in war with infidels, captive women are usually distributed among the Muslims who take part in war, and this custom is not something that is obligatory. The priest may prohibit this custom. This means: owned slaves whose husbands did not accompany them as captives

From the verse above, it is known that the reason for validating sexual intercourse is only through two ways. Namely valid marriage and slavery. while the wife of a mut'ah marriage does not function as a wife because: First: They do not inherit each other, while the marriage contract is the reason for obtaining inheritance. Second: The iddah of a contract marriage is not like a regular marriage. Third: With the marriage contract, a person's rights are reduced in relation to having four wives, whereas this is not the case with mut'ah. Fourth: By performing mut'ah, a person is not considered to be a muhsin because the woman who is taken through mut'ah does

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<sup>4</sup> Beni Ahmad Saebani dan Syamsul Falah, *Hukum Perdata Islam Di Indonesia* (Bandung: Pustaka Setia, 2011), 31–32.

not function as a wife, because mut'ah does not make a woman have the status of a wife or a slave, so people who perform mut'ah are included in the word of Allah.<sup>5</sup>

#### **b. Dalil Hadits (Sunnah)**

Initially, the Prophet SAW allowed contract marriages in the year of the conquest of Mecca. But still in the same year he banned it. Some say that this prohibition on contract marriage was during the Khaibar war. But what is true is the year of the conquest of Mecca. What was forbidden during the Khaibar war was eating meat from domestic donkeys. Indeed, Ali bin Abi Talib once said to Ibn Abbas, "The Messenger of Allah forbade contract marriages and domesticated donkeys during the Khaibar war." Then some narrators thought that the mention of Khaibar applied to these two problems. But there was a narrator who mentioned limiting one of them to the Khaibar war. Contractual marriage was once permitted by the Prophet before the stability of Islamic law, namely it was permitted during travel and war. However, it was later forbidden

The secret of allowing contract marriage at that time was because the Islamic society at that time was still in transition (the transition period from ignorance to Islam). While adultery during the ignorance period was a common thing. Then after Islam came and called on its followers to go to war. Because their distance from their wives was a heavy suffering. Some of them were strong in faith and some were not strong in faith. For those whose faith was weak, it would be easy to commit adultery which was a heinous and forbidden act. And for those whose faith was strong, they wanted to castrate their genitals. As narrated by Ibn Mas'ud:

عن ابن مسعود قال : كنا نغزو مع رسول الله صلى الله عليه وسلم وليس معنا نساء فقلنا : ألا نستخصي؟ فنهانا رسول الله صلى الله عليه وسلم عن ذلك ورخص لنا ان ننكح المرأة الثوب إلى أجل

Ibn Mas'ud said that at that time we were at war with Rasulullah SAW and there were no women with us, so we said: can we castrate (our genitals). So Rasulullah SAW forbade us to do that. And the Messenger of Allah gave us relief to marry women with a dowry of clothes up to one time

But the relief that the prophet gave to his friends was only for three days after which he forbade it, as he said:

<sup>5</sup> Muhammad Hilmi Ajjahidi and Ayu Lika Rahmadhani, "Nikah Mut'ah Dalam Masyarakat Muslim Indonesia Serta Pandangan Hukum Positif Tentang Pelaksanaannya," *Journal of Indonesian Comparative of Syari'ah Law* 5, no. 2 (2022).

وعن سلمة بن الأكوع قال : رخص رسول الله صلى الله عليه وسلم صلى الله عليه وسلم أوطاس في المتعة ثلاثة أيام ثم نهى عنها

From Salamah bin Akwa' said: Rasulullah SAW gave concessions on contract marriages in the year of Authas (conquest of the city of Makah) for 3 days then he prohibited it

From this hadith Salamah provides information that the Messenger of Allah saw once allowed contract marriage then forbade it and removed the leniency. According to Nawawi the prohibition and permission occurred twice, the permission was before the war of Khaibar then it was forbidden in the war of Khaibar then it was allowed again in the year of the conquest of Mecca, after that contract marriage was forbidden forever.<sup>6</sup>

### c. Dalil Akal

Apart from what has been stated above, there are several reasons why contract marriage is prohibited, namely:<sup>7</sup>

As is known, the purpose of the Prophet Muhammad's sending is a mercy for the entire universe, therefore, Allah SWT forbids contract marriage because it is not in accordance with the mission carried out by the Prophet Muhammad.

When viewed from the definition of contract marriage, a marriage like this is a contradiction to the true meaning of marriage. Because the purpose of a marriage is a strong bond and a firm agreement that is upheld on the basis of the intention to socialize between husband and wife as mentioned in the Qur'an, namely peace, love, and affection and for the sake of the development of offspring and the survival of humanity.

In the principle of a marriage, contract marriage is not in accordance with the marriage that Allah SWT has ordained. Contract marriage is limited by time, ending with the expiration of the time specified in the contract, while in sharia, marriage ends with divorce or death

In addition to being limited by time, contract marriage also does not limit the number of wives that can be married. So it is permissible for a man to marry more than four wives. And this can be done without a guardian or without the consent of his guardian, and in this marriage there is no need for witnesses, announcements, divorce, inheritance and provision of maintenance after the completion of the agreed time.

Viewed from the perspective of its harm (negative impact), contract marriage is a form of harassment against women, destroys family harmony, neglects generations, causes and spreads

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<sup>6</sup> Muhammad Saleh Ridwan, "Perkawinan Mut'ah Perspektif Hukum Islam Dan Hukum Nasional," *Jurnal Al-Qadāu* 1, no. 1 (2014): 37–46.

<sup>7</sup> Rudi Santoso, "Hukum Nikah Mut'ah Menurut Tekstual Dan Kontekstual," *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 1, no. 1 (2020).

sexually transmitted diseases, disturbs society, and because it is not required to have a guardian and witness, it is possible that someone marries between two siblings, between a child and his mother or aunt and it is not impossible that he marries his own child from a previous Mut'ah Marriage.<sup>8</sup>

### The Phenomenon of Contract Marriage in Indonesia

Contractual marriage in Indonesia is a phenomenon that often occurs in tourist areas, business areas and certain areas with residents who have low social, religious and educational backgrounds, as well as people who are relatively poor. The practice of contractual marriage is usually carried out by local people (Indonesian citizens) with foreign citizens (WNA), especially in the Bogor area and its surroundings.<sup>9</sup> Contractual marriage is seen as part of one of the livelihoods with customers who are usually foreigners, especially from the Middle East. Even in the Jepara area, there are parents who have daughters who will have a fairly good life or economic income by means of their daughters being ready to be married mut'ah (contractual marriage) with a dowry (dowry) considered very high. So that contractual marriage is considered financially profitable, by exploiting sexual.

The practice of contract marriage is an important concern for most Indonesian Muslim communities in general, causing concerns among Indonesian people about the development of the practice of contract marriage. Contract marriage is a terrible scourge for some Muslim communities.<sup>10</sup>

The MUI (Indonesian Ulema Council) fatwa on the prohibition of contract marriage was motivated by First: Letter from the Secretary General of the Indonesian Ministry of Religious Affairs dated October 11, 1996 regarding the need to issue a Fatwa on Contract Marriage. Second: Letter from the Central Leadership Council of Ittihadul Muballighin issued on October 3-5, 1997 in Bogor regarding contract marriage. Third: Paper presented by Prof. KH. Ibrahim Hosen, LML entitled on the law of contract marriage, paper presented by KH. Ma'ruf Amin and Muh. Nahar Nahrawi entitled observing the law of contract marriage at the Indonesian Ulema Council Fatwa Commission Meeting on October 25, 1997 with a discussion on contract marriage. Fourth: Opinions, suggestions and advice from participants in the Indonesian Ulema Council Fatwa Commission Meeting on October 25, 1997.

<sup>8</sup> Mardani, *Hukum Perkawinan Islam Di Dunia Islam Modern* (Yogyakarta: Graha Ilmu, 2011), 15–16.

<sup>9</sup> Mimin Mintarsih and Lukman Mahdami, "The Legal Status of Mut'ah Marriage in Indonesia," *Jurnal Penelitian Hukum De Jure* 21, no. 3 (2021): 397.

<sup>10</sup> Ridwan, "Perkawinan Mut'ah Perspektif Hukum Islam Dan Hukum Nasional."



The MUI fatwa was strengthened by considering that the practice of contract marriage in Indonesia has been widely carried out by several Muslims, especially among young people and students. The practice of contract marriage has caused concern, worry and anxiety for parents, clerics, educators, community leaders, and Indonesian Muslims in general, and is seen as a propaganda tool for Shia ideology in Indonesia. That the majority of Muslims in Indonesia are adherents of the *ahlussunnah wa al-jama'ah* (Sunni) ideology which rejects Shia ideology<sup>11</sup> in general and its views on contract marriage in particular, and therefore a fatwa was immediately issued on the prohibition of contract marriage by the Indonesian Ulema Council. In line with this, regarding contract marriage or what is commonly known.

In line with this, regarding contract marriage or what is commonly known as contract marriage, in this case at least four legal regulations that apply legally in Indonesia can be cited as follows:

- a. Pancasila, especially the first principle, which states Belief in the One Almighty God and the second principle which states Just and Civilized Humanity.
- b. The 1945 Constitution (UUD), in chapter 31 concerning religious issues, in Article 29 paragraphs 1 and 2.
- c. Law Number 1 of 1974 concerning marriage states that "Marriage is a form of physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the Almighty God.
- d. Article two in the Compilation of Islamic Law (KHI), states that Marriage according to Islamic Law is a very strong contract or *mitsaqan galizan* to obey Allah's command and doing it is a form of worship. Also Article 3 which emphasizes, the purpose of the Marriage is to realize a household life that is *sakinah, mawaddah, and rahmah*.

So based on the four things listed above, in order to realize a prosperous and harmonious family, the direction and policies will become clearer with the creation of laws and regulations by the relevant government authorities so that the goal of providing protection for all Indonesian people can be achieved.<sup>12</sup>

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<sup>11</sup> Ulama Syi'ah berpendapat bahwa tidak ada hadis Nabi yang sahih yang mencabut kebolehan nikah mut'ah, dengan arti masih tetap boleh hukumnya sampai sekarang. Hadis Nabi yang mencabut nikah mut'ah itu yang dijadikan dalil oleh ulama Ahlu Sunnah tidak diterima kesahihannya oleh ulama Syi'ah untuk mencabut hukum yang sudah ditetapkan sebelumnya. Alasan selanjutnya yang digunakan ulama Syi'ah ini ialah bahwa kebolehan melakukan nikah mut'ah dahulunya sudah merupakan *ijma'* ulama dan telah diyakini bersama kebolehannya, sedangkan adanya dalil yang mencabut kebolehannya bersifat diragukan, sesuatu yang meyakinkan tidak dapat dicabut dengan sesuatu yang diragukan.

<sup>12</sup> Abdul Manan, *Aneka Masalah Hukum Perdata Islam Di Indonesia* (Jakarta: Kencana, 2017), 12–13.



## Contract Marriage in the Puncak Bogor Area

Contractual marriage is a marriage that is carried out within a certain time limit as agreed by both parties. When the time is up they will separate on their own. Like the Santisa marriage or passport marriage put forward by Mr. H. Gogom, some even call it a tourist marriage. This is because contractual marriage is often associated with the arrival of foreign tourists, especially the Middle East. However, in reality, not only foreign tourists carry out such time-limited marriages, but also many local tourists from outside Bogor.

The term contract marriage, which is widespread in the Puncak area, is used to refer to marriages carried out with tourists, both foreign and local, which are limited to a certain time without any standard rules and do not follow the applicable marriage rules as they should.<sup>13</sup>

### a. Contract Marriage Perpetrator Profile.<sup>14</sup>

Santi is a short-time worker. One time, Santi was asked to serve a guest from Jakarta. Before carrying out her work, Santi was asked to perform the *ijab kabul* first. Her guest explained that the contract was only for two hours, after two hours Santi could leave him without any consequences. After they agreed on the wage as a dowry that had to be paid at Rp. 400,000 per hour, the two performed the contract without the presence of a guardian, witnesses, or registrar. According to her guest, she did not want to commit adultery. So, she performed the *ijab kabul* first so that the relationship that was carried out was *halal* like a husband and wife

According to Santi's confession, her co-worker named Dewi had once had a contract marriage with a Middle Eastern tourist for quite a long time. According to her guest's confession, he wanted to be accompanied by a woman to channel his sexual desires but did not want to fall into adultery. He asked Dewi to perform the marriage contract first with a time limit while he was in Indonesia. The marriage took place in the presence of a guardian, two witnesses, and a registrar. However, all of them were paid people who had been prepared. From her contract marriage, Dewi had a child. After the return of the guest who had the status of father of her child, he never provided maintenance and never contacted her again. Dewi did not carry out the waiting period after separating from her husband.

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<sup>13</sup> Siti Sarah Maripah, "Fenomena Kawin Kontrak Di Kawasan Puncak Bogor," *Sosietas* 6, no. 2 (2016).

<sup>14</sup> Nurlailiyah Aidatussholihah, "Kawin Kontrak Di Kawasan Puncak Antara Normatif, Yuridis Dan Realita," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 5, no. 2 (2012): 31–56.

Unlike Diera, once Diera was visited by a guest from Medan. He wanted Diera to accompany him during his assignment in Tugu Utara Village, Cisarua District. However, he did not want to fall into adultery, he asked Diera to become his contract wife by first doing the *ijab kabul*. Diera followed his wishes with the help of a motorcycle taxi driver, Diera who prepared the guardian, witnesses, and *penghulu*. They were all paid people prepared by the motorcycle taxi driver. The dowry given was in the form of a motorbike and a nine-gram gold necklace according to Diera's request. The sustenance given was worth Rp7,500,000 for three months. After the contract period ended, the man pronounced divorce. Diera did not undergo the waiting period as she should have.

Another case of contract marriage as told by Inayah, Edah's close neighbor, Edah once had a contract marriage with a Taiwanese person. The marriage was carried out like a marriage in general, attended by Edah's biological father as guardian, two witnesses, and a marriage registrar. The marriage was carried out in the Bogor area with a contract period of three years.

An interesting confession from Jaja, one of the guards of the Santila villa in the South Tugu area facing the North Tugu. Jaja admitted that he had been a paid guardian. According to him, this kind of thing is very difficult to eliminate because the village government itself is unable to handle it. In fact, if foreign tourists want to get married officially, they have to go through a complicated procedure. As a guard of Santila, Jaja often gets large tips. For example, if Jaja's female colleague has a contractual marriage with a guest staying at the Santila he is staying at, he will get half of the wages received by the woman.<sup>15</sup>

#### **b. Implementation of Contract Marriage.**

Contract marriages that occur in the Puncak area are often used as an excuse to earn a living. The perpetrators are basically not good women who are able to maintain their chastity, but rather commercial sex workers who use adultery as a source of income.

Before the contract marriage contract takes place, the male perpetrator first orders the woman he wants through a motorcycle taxi driver/Santila guard or car rental driver. After an agreement is reached, the intermediary party-motorcycle taxi driver/Santila guard or car rental driver will deliver the woman.

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<sup>15</sup> Aidatussholihah, "Kawin Kontrak Di Kawasan Puncak Antara Normatif, Yuridis Dan Realita."

Contract marriages that take place in the Puncak area are carried out with the presence of both bride and groom, *ijab kabul*, dowry, and a time limit that is mutually agreed upon. The amount of dowry is determined according to the contract period agreed upon by both parties. In addition, there are also those who carry it out with the presence of guardians and witnesses, both legal guardians and paid guardians.

According to Santi and Diera's confession, when the contract period ends they do not undergo the *iddah* period and they are allowed to make a new contract with someone else after the contract period ends with the first contract husband.

As explained above, contract marriage is a term for a marriage carried out with tourists, both local and foreign, for a certain period of time as agreed, with a certain wage as a dowry. The determination of the amount of wages is adjusted to the contract period. When the period is over, both will separate without a waiting period for the ex-wife if she will remarry someone else. In its implementation, contract marriage is only carried out by two people who carry out the contract, namely the man and the woman, as was done by Santi. There are also those who present a guardian, two witnesses, and a legitimate registrar such as the marriage carried out by Edah. Another form of contract marriage, namely its implementation is attended by a guardian, two witnesses, and a paid registrar as was done by Diera and Dewi. The implementation of contract marriage is like hidden prostitution in the name of marriage, because in reality women who carry out contract marriages are not women who are able to protect themselves, but they are commercial sex workers who make adultery a source of income, as stated by the perpetrators. They carry out contract marriages only following the requests of guests, not of their own free will. Basically they know that such marriage is forbidden. However, for the sake of fulfilling their living needs they are willing to do it

One thing that cannot be denied is that the existence of contract marriage provides quite a large profit. Because, when a contract marriage takes place, many parties are involved, such as the owner of the Santila/hotel/lodging, lavatory, Santila guard, motorcycle taxi driver, hired women, sometimes even village officials are involved in it. They will get their respective shares according to the agreement.<sup>16</sup>

### **c. Contract Marriage Practice.**

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<sup>16</sup> Aidatussholihah, "Kawin Kontrak Di Kawasan Puncak Antara Normatif, Yuridis Dan Realita."

The practice of contract marriage that occurred in Cisarua, Bogor Regency began with the arrival of Arab men to travel to this area, then carry out contract marriages. For Arabs, when it is summer they prefer to spend it by leaving their country and then going on vacation to another country. The practice of contract marriage is not carried out by local residents (Cisarua), but by male tourists who are Arab with women from other areas, such as Sukabumi, Cianjur, Subang, and Bandung. The process of implementing contract marriages has experienced dynamics, according to one informant, the phenomenon of contract marriages has been going on for a long time, around the 1990s the phenomenon already existed. Initially, contract marriages were carried out by several Arab tourists, if they were certain that they would carry out a contract marriage, the man, namely the Arab, would come to the residence of the woman's family in her village to make sure who the woman's family was, then marry her. At that time, marriages were carried out according to religion only and were not registered.<sup>17</sup>

However, along with the development from time to time, now almost all women who engage in contract marriages usually fake their family identities and ask other people to pretend to be their family. After that, accompanied by people who introduce the woman, a contract marriage occurs. Before getting married, the man, namely the Arab, will usually first convey how long he wants to be married. If he wants it for a week, then after one week, the marriage is considered complete, then the woman is returned to her village. The implementation of contract marriages does not go through a proposal, they immediately carry out the akad or ijab qabul at the woman's residence or other place with a guardian, witnesses, and amil (assistant registrar) who are all fake. Usually the registrar, guardian, and witnesses are just pretending, but the Arabs also do not investigate or ask about the truth of this. Although it does not go through the proposal process, they still use a dowry which is usually a sum of cash. There is no wedding reception in the implementation of contract marriages

After the marriage contract is completed, the woman is taken to a villa in the Cisarua Puncak area, where the Arab man has been renting it all this time. The location of the marriage can be in the woman's home area, but not necessarily at home, sometimes it happens in a restaurant. This fake marriage is also carried out in other areas, such as Jakarta

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<sup>17</sup> Muhammad Hilmi Ajjahidi and Ayu Lika Rahmadhani, "Nikah Mut'ah Dalam Masyarakat Muslim Indonesia Serta Pandangan Hukum Positif Tentang Pelaksananya," *Journal of Indonesian Comparative of Syari'ah Law* 5, no. 2 (2022): 206–222.

or Cisarua. This depends on the request of the Arab man. Usually the woman will be taken by the liaison to the agreed place, complete with a guardian, witnesses, and amil.

The women are mostly from villages in the Sukabumi, Cianjur, and Subang areas. The women in these villages generally do not have permanent jobs. Some areas in the villages generally find it difficult to get jobs. The difficulty of finding work is one of the factors why many women choose to accept contract marriages.<sup>18</sup>

#### d. **Contract Marriage Motive.**

Here are several reasons why contract marriages are carried out by the perpetrators. For female perpetrators, they generally carry out contract marriages for economic reasons. Most women get certainty of monthly income or dowry with a large amount so that it can be used to build a house, send children to college, business capital, increase savings/deposits for their future. If examined further, several factors causing contract marriages are due to low education, wrong understanding of Islamic teachings, biological needs (sexuality), the impact of industrialization, individualistic social conditions of society, and a materialistic culture that views welfare only from material or money. Contract marriages in other countries, for example in Egypt clearly show that the motivation of Egyptian women to have contract marriages with men from the Gulf countries is because they live in poverty. Meanwhile, for most men, the reason for contract marriages is more dominant to channel their biological needs. Meanwhile, for most men, the reason for contract marriages is more dominant to channel their biological needs safely and is considered not adultery.

Contract marriages between Egyptian men and local women include those from Hawamdiyya, one of three cities known for providing women for Arab tourists to marry. There is an established network of intermediaries and lawyers who provide young women and then carry out *zawaj misyaif* or contract marriages. These marriages last for several days to several weeks, there is a written contract and witnesses that make this marriage sharia or valid according to Islamic law. However, these marriages remain unofficial because they are not registered with the government.

Marriage is sacred. For example, the culture of marriage in Egypt is described as sending a rocket to the moon, there are several stages that must be carried out before

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<sup>18</sup> Abdul Jamil Wahab, Kustini Kustini, and Muchtar Ali, "Fenomena Kawin Kontrak Dan Prostitusi 'Dawar' Di Kawasan Puncak Bogor," *Alqalam* 35, no. 1 (2018): 127.

entering orbit. The family is the fuel for takeoff. The families of both parties must know each other. They must openly acknowledge the relationship and also bless it. The next orbit is engagement. The higher orbit is registering the marriage officially. The next orbit is the wedding celebration. Having intercourse before the wedding celebration is considered a bad act

There are many changes now, for example the average age of marriage in Egypt is around 29 years for men and 24 years for women. The delay in marriage or what is often called the waiting period is because marriage is an expensive commodity. Young people in Egypt express their reasons for delaying marriage, women ask for too much jewelry, gold items, diamonds. Plus apartments, home furnishings, plus *muakhkhar* (a certain amount as a guarantee if a divorce occurs later), plus dowry (money given by men to women). The complaint is not only for the lower middle class but also felt by middle class men.<sup>19</sup>

Marriage is a natural desire of 90 percent of Arabs, regardless of age, gender, or education. The urge to marry is largely driven by family pressure and religiously motivated. The Quran strongly encourages marriage, sex outside of marriage is *zina* which is a forbidden relationship. In order to be able to marry according to culture and religious guidance, men in Arab countries generally work hard to have enough provisions and then be able to marry, but if this is not possible then they are forced to postpone marriage.

There is no doubt that as a country with a Muslim majority population, the desire of people in the Arab world to avoid *zina* is so great. However, this does not mean that there is no prostitution, now we can take a closer look at the lives of people who are in the circle of sex trafficking in the Arab world, for example in Egypt, Tunisia, and Morocco. Currently certain forms of marriage function in the same way, borrowing the honor of religion for something that is openly a commercial sexual relationship

In the case of Indonesia, with the various natural beauties owned by the Indonesian people, it is very logical that many Arab tourists come. In addition to enjoying the natural beauty such as in the Puncak Bogor area, they also want female companions while they spend their holidays. The presence of these tourists is actually utilized by the biong or agents, by offering women who are ready to be invited to the villa to accompany Arab

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<sup>19</sup> Cerni City Mulyanti and Tias Febtiana Sari, "Interpretasi Kontekstual Hadis Nikah Mut ' Ah : Studi Kasus Kawin Kontrak Di Indonesia," *Al-Tadabbur: Jurnal Ilmu Al-Qur'an dan Tafsir* 6, no. 2 (2021): 375–384, <https://journal.uinsgd.ac.id/index.php/kh/article/view/7129>.

tourists. Regardless of the debate, who started it, but in reality today, the presence of Arab tourists has contributed to the birth of many illegal marriage practices such as contract marriages, and has even fostered the practice of hidden prostitution.<sup>20</sup>

### Impact of Contract Marriage

After a contract marriage occurs, the biggest impact that will be felt by the woman is :<sup>21</sup>:

#### a. Social Impact.

The same as other people who have normal marriages. So the wife who has a Contract Marriage also lives her life in the midst of the community, because as social beings, these wives also need to socialize. In general, the interaction of the contract wife with family and neighbors (the surrounding community) is still going well. But the change is the intensity of interaction which tends to decrease. The reason is that after getting married, the contract wife moves with her husband to a place far from her original residence, so this situation affects the meeting and communication of the contract wife with her family and neighbors before. This is different from the impact of contract marriage in Jepara City, namely marriage to a foreign man has changed the cultural value system of Jepara women (wives) of the contract, including: discipline, efficiency, closed, workaholic, do not like to gossip, respect time, talk as needed, do not want to be disturbed and tend to be suspicious of people they do not know. Contract marriage has a positive impact in terms of culture for local women. So far, they have never experienced sexual violence from Middle Eastern men, it's just that they often feel tired during sexual intercourse. This shows that there is sexual exploitation of women who are perpetrators of contract marriages by Middle Eastern men.<sup>22</sup>

#### b. Psychological Impact.

Psychologically, marriage between local women and foreigners has its own experiences and impacts. This can be analyzed from the situation before and after marriage. On the one hand, they get happiness and peace because they have left their previous status. And after marrying the foreigner, they feel calmer because there is someone to accompany them. However, this will not last long and will return to the situation before marriage and even more difficult the situation that will be faced after the marriage contract ends.

#### c. Economic Impact

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<sup>20</sup> Wahab, Kustini, and Ali, "Fenomena Kawin Kontrak Dan Prostitusi 'Dawar' Di Kawasan Puncak Bogor."

<sup>21</sup> Ajjahidi and Rahmadhani, "Nikah Mut'ah Dalam Masyarakat Muslim Indonesia Serta Pandangan Hukum Positif Tentang Pelaksanaanya."

<sup>22</sup> Maripah, "Fenomena Kawin Kontrak Di Kawasan Puncak Bogor."



Economic problems are one of the crucial causes that result in Contract Marriage. The promise of fulfilling needs and giving money every month with a certain amount based on the agreement makes them live together living a household based on the agreement. The positive impact received from the results of the marriage is that they get economic benefits even though not all feel the promised pleasure in full.<sup>23</sup>

### **Sociological View of Law on Contractual Marriage Practices**

In the concept of marriage in general, it is based on mutual love between the prospective husband and wife, or mutual acceptance between the prospective husband and wife. That mutual acceptance and love can be based on the rationality of each prospective bride and groom, such as reasons of wealth, beauty/handsomeness, descent, and religion. And that is valid according to Islam, because with mutual love and acceptance, a family will be formed that loves each other (*sakinah mawadah warahmah*). In addition, it is also expected that in the household there is a dimension of democracy and gender equality between husband and wife. This is mandated in the Marriage Law Number 1 of 1974, especially in Chapter I Articles 3, 4, and 5, it is stated that between wife and husband there are equal rights, especially within the framework of the household or commonly known as the domestic sphere. Meanwhile, the rights to act in the public sphere or outside the household are also expected to have gender equality. This can be realized when there is a commitment between the two before entering the marriage period. For example, there is an agreement between the two that when they are married, the husband will allow his wife to work outside the home and take turns doing housework.

However, after going through the household, many women become domestic figures only. There are cultural values that limit women's movement in the public sphere. This is a result of the hegemony of the patriarchal culture of the society where the family is located. For example, career women (wives) who work at night, like to dress minimally, do not like to do kitchen work such as washing clothes/dishes, do not cook, and so on which are inappropriate behavior for married women. In a patriarchal society, especially Javanese society, there is a kind of moral teaching that women (wives) are obliged to "serve" their husbands fully. This means that all of the wife's activities are directed towards the interests and needs of the husband, such as providing food, washing, taking care of children, and being a bed partner. On the other hand, when a husband does domestic work like the above, he will be considered unmanly, inappropriate, or

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<sup>23</sup> Ali Akhbar Abaib Mas Rabbani Lubis, "Nikah Mutah: Kontekstualisasi Narasi Dan Nalar Nikah Mutah," *Istinbath* 19, no. 1 (2020).

even idle. So, it is the structure of society that limits the movements of wives. Perhaps it is even more biased in a secret marriage and contract marriage (Kawin Kontrak).<sup>24</sup>

In the issue of contract marriage that we are discussing with a sociological approach, indeed, one region has a different perception from another region. In a society where there is almost no practice of contract marriage, they will consider someone who does it as someone who has deviated from that society. They will view it as another form of prostitution.

Meanwhile, in a society where marriage is common in life by means of mut'ah, they will view it as normal. It is a common act and is not deviant behavior. However, in their norms of decency, it is a common thing and is sometimes considered a hero for his family whose economic condition is worrying. So it can be said that currently sociologically, contract marriage is relative to the structure of society. Because each social group has its own views related to the issue of contract marriage

This is where the importance of the role of Islamic Legal Sociology contributes to solving community problems, especially those related to the behavior of the results of Islamic law (Religion), so that Islamic teachings always become the teachings of Rahmatan Lil alamin, not instead becoming a scapegoat when its adherents do not find solutions to the various problems faced, contract marriages that have long been going on even though only in several areas, such as in Rembang, Pasuruan, Jepara, Bogor, although the perpetrators of mut'ah marriages in these places are somewhat uncomfortable and embarrassed to admit their actions, because they know that the marriage they are undergoing is contrary to Islamic law and statutory regulations. However, they need money to live their lives. In terms of contract marriages, Islamic Law and the Marriage Law have very firmly prohibited it, even with sanctions at the same time if there are violations.<sup>25</sup>

## CONCLUSION

Contractual marriage in Indonesia is a complex phenomenon that touches on aspects of legality, morality, and social reality. Legally, this practice is in a gray area because it is not explicitly regulated in national marriage law, but it can involve violations of laws related to human trafficking and sexual exploitation. Morally, contractual marriage is often viewed negatively because it is considered to degrade human dignity, especially women, and is contrary to religious and cultural values that uphold the sanctity of marriage. From a social reality

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<sup>24</sup> Fahmi Basyar, "Konstelasi 'Urf Dan Istihsan Tentang Nikah Mut'Ah Dengan Pendekatan Sosio-Legal," *Istidlal: Jurnal Ekonomi dan Hukum Islam* 6, no. 2 (2022): 148–159.

<sup>25</sup> Fahmi Basyar, "Konstelasi 'Urf Dan Istihsan Tentang Nikah Mut'Ah Dengan Pendekatan Sosio-Legal."

perspective, contractual marriage often occurs due to economic pressures and poverty that force individuals to seek temporary solutions.

Contractual marriage is considered by the perpetrators as a marriage, so in the view of religious leaders and local government officials, the marriage contract process in contractual marriage does not meet the requirements and pillars of marriage, such as paid marriage guardians, and the iddah period does not apply. Islamic law prohibits contractual marriage, contractual marriage is only permitted in certain circumstances such as during the war that occurred during the time of the Prophet Muhammad SAW, but the law on contractual marriage has been Mansukh (abolished) and is forever forbidden. Then, through positive law, Indonesia prohibits contractual marriages because this is contrary to the basic foundations of the Indonesian state and is not relevant to the sociological context of Indonesia

In addition to the legal approach, other approaches are also needed, so that it is handled more comprehensively, for example through an economic approach by designing the Puncak area into a religious tourism, this is very logical because the majority of Arab tourists are from Muslim countries. In addition, training is needed to support the tourism sector for women who are involved in contract marriages.

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