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Criminalization of Birth Certificate Forgery in Minors' Marriages¹

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Abstract

In Indonesia, the faking of birth certificates is extremely widespread. Marriages between minors are among the factors that contribute to the falsification of birth certificates. The purposeful forgery of birth certificates is done so that a child can easily obtain permission to marry and is not restricted by laws protecting minors who marry. The study employs a qualitative research methodology that combines a literature approach and a legal approach. According to the findings of the study, the falsification of birth documents in the marriage of minors also violates the law. Counterfeiting is a sort of norm violation, namely of the truth or public order. No identity fraud will occur if the marriage is performed in accordance with the applicable procedures. Due to the lack of education and information of parents, children, and the community, underage marriage is prevalent. This is one of the most powerful causes because their lack of education and information influences their children who marry before the age of majority.

Keywords: Birth Certificate Forgery; Marriage Law; Minors

Abstrak

Pemalsuan akta kelahiran yang terjadi di Indonesia sangat sering terjadi. Beberapa hal yang menjadi salah satu penyebab pemalsuan akta lahir adalah karena adanya pernikahan anak dibawah umur. Pemalsuan akta lahir ini sengaja dilakukan agar seorang anak mendapatkan ijin menikah dengan mudah dan tidak dibatasi dalam undang-undang perlindungan anak yang menikah dibawah umur. Penelitian menggunakan metode penelitian kualitatif dengan pendekatan literature dan pendekatan perundang-undangan. Hasil penelitian menyatakan bahwa pemalsuan akta lahir pada pernikahan anak di bawah umur juga mengakibatkan hukum pidananya. Perbuatan pemalsuan merupakan suatu jenis pelanggaran norma yaitu kebenaran atau kepercayaan dan ketertiban masyarakat. Pemalsuan identitas tidak akan terjadi apabila perkawinan dilaksanakan dengan mengikuti prosedur yang berlaku. Rendahnya tingkat pendidikan maupun pengetahuan orang tua, anak dan masyarakat, menyebabkan adanya kecenderungan untuk mengawinkan anaknya yang masih di bawah umur. Hal ini menjadi salah satu faktor yang sangat berpengaruh karena pendidikan dan pengetahuan yang tidak mereka dapatkan menjadi imbas bagi anak-anak mereka yang dikawinkan di bawah umur.

Kata Kunci: Pemalsuan Akta Lahir; Hukum Pernikahan; Anak Dibawah Umur

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A. INTRODUCTION

The Marriage Law No. 1 of 1974 stipulates in Article 6 paragraph (2) that a person who has not reached the age of 21 must seek the consent of both parents in order to marry. Article 7 of the Constitution states that a man and woman may only marry after each has achieved the age of 19 (nineteen) years. A prospective husband and wife may only marry if they have reached the minimum ages specified in Article 7 of Law Number 1 of 1974, which states that the prospective husband must be at least 19 years old and the prospective wife must be at least 16 years old, as explained in Article 15 paragraph (1) of the Compilation of Islamic Law (KHI). Article 15 paragraph (2) stipulates that potential bride and grooms under the age of 21 must get a permit in accordance with Article 6 paragraph (2), (3), (4) and (5) of Law No. 1 of 1974.

To put it simply, Islamic law is guided by five principles: the protection of religious beliefs; the preservation of life, children, property; and the preservation of reason. One of Islam's five universal values is to protect one's children (*hifdzu al nasl*). Because it is regarded as the ultimate goal of Islamic law, *hifdzu al nasl*, the effort to produce decent offspring becomes the primary standard in marriage.

In terms of the view of early marriage between religion and the state, there are different perspectives. Marriages that are carried out beyond the minimum limit of the marriage law are considered invalid by state law, because early marriage according to the state is limited by age, while from a religious point of view, early marriage is marriage carried out by people who have not entered adulthood (*baligh*).

Identity is a person's identity that is found in everyone, but with identity falsification, a person can falsify his own data for an interest. But ironically, the falsification of personal data is carried out on a child to carry out a marriage. This is something that often happens in Indonesian society, with the aim that child marriage does not become an obstacle in the future in terms of age. Whereas the essence of the pillars of marriage is the agreement between the two parties and the conformity of the will of the two parties to bind themselves in household ties, so as to create a harmonious relationship between the two. Not based on the existence of identity and age falsification to legalize marriages that do not meet the terms and conditions in state regulations.⁴

Falsification of the age of marriage in this case is a crime, because it contains elements of an untruth or false state of something (object) which looks from the outside as if it were true, even though it is contrary to the truth.⁵

When referring to the definition of falsification, then falsification is defined as the process of making, adapting, imitating objects, statistics, or documents, with the intention of deceiving. Counterfeiting is a type of violation of two basic norms: 1). Truth (belief) whose violation can be classified as a crime of fraud. 2). Public order, whose violation is classified as a fraud crime.

⁴ M. Anshary, (2010). *Hukum Perkawinan di Indonesia*. Yogyakarta, Pustaka Pelajar.

⁵ Adami Chazawi, (2001). *Kejahatan Terhadap Pemalsuan*, Jakarta, Raja Grafindo Persada, p.2.

The act of counterfeiting is classified as a fraud crime group if someone gives a description of something on the goods as if it is original or true, while the truth is not owned. Apart from this data description, other people believe that the conditions described for the goods/letters/data are true or genuine. Forgery of writing or data occurs when the contents or data are incorrect.

One form of forgery is identity fraud. Identity falsification or commonly referred to as identity manipulation consists of two syllables, namely manipulation and identity. Manipulation is an absorption word that comes from English, namely "manipulation" which means "abuse or misappropriation."⁶

Forgery of identity or misuse of this identification card can happen because at a certain time there are too many applicants for ID cards, birth certificates, or other identification cards. The purpose of identity clarity is the existence of legal clarity for people or individuals in order to maintain their rights and obligations under the law and also as a protection for individuals.

There are several causes of identity falsification in marriage, namely:⁷

1. The bad mental attitude of the perpetrators who basically want to make as much profit as possible for their own interests.
2. Lack of knowledge of some members of the community about marriage and its implementing regulations and other applicable laws and regulations as well as *munakahat* law.
3. Lack of orderly administration of marriage divorce reconciliation (NCTCR), due to lack of knowledge and technical ability of the officers or marriage certificate registrar employees (PPN) and their representatives.
4. The Marriage Law and its implementing regulations have not been fully implemented, including the *munakahat* fiqh. In addition to the unequal understanding among the community and institutions that result in a lack of concern for marriage.
5. There is a desire for polygamy without having to be known by his wife and making it easier for him without having to ask permission to the court.

Counterfeiting is a type of violation of truth and trust, with the aim of obtaining benefits for oneself or others. Because the act of counterfeiting is a threat to the survival of the community.⁸

In Islamic law, forgery is more often aimed at false testimony, so it is difficult to find the right definition for the crime of forgery. In Islamic law, counterfeiting is an act of lying or lying which is considered a sin. The crime of forgery is rare in the history of Islamic law, but what is most often considered as forgery is giving false testimony or information.

⁶ John M Echols, & Hasan Shadily, (2000). *Kamus Inggis Indonesia*, Jakarta, PT Gramedia, p. 372.

⁷ Ahmad Rofiq, (2003). *Hukum Islam di Indonesia*, Jakarta, PT Raja Grafindo Persada, p. 111.

⁸ Adami Chazawi, (2001). *Kejahatan mengenai Pemalsuan*, Jakarta, Rajagrafindo Persada, p. 37.

There are two factors behind the falsification of the identity of minors in marriage, namely: Internal factors and External factors. Internal factors include; culture, parental concerns, and matchmaking, while external factors include, lack of awareness of education level, lack of socialization from KUA, presence of illegal administrators (brokers), and difficult economic conditions.

From the problems above, the author then focuses the discussion on two questions as the formulation of the problem, namely; What is the law on child marriage? And what are the sanctions for the crime of falsifying birth certificates in underage marriages?

B. METHODS

The research method is basically a scientific way to obtain data with a specific purpose and use.⁹ Qualitative research is a research aimed at analyzing phenomena, events, activities, social, attitudes, beliefs and thoughts of people individually or in groups. The research approach used in this study is a normative juridical approach, namely a method that uses secondary data sources. This method refers to laws and regulations, legal theories, and the opinions of leading legal scholars. The data is then analyzed and conclusions are drawn from the problems that will be used to test and review the secondary data.¹⁰

C. RESULTS AND DISCUSSION

1. Legality of Child Marriage

Marriage is an inner and outer bond between a man and a woman who gives birth to a family as an element in social and state life, which is regulated by the rule of law, both Islamic law and positive law (state).¹¹

A good marriage is a marriage carried out between a man and a woman who share the same faith, morals and goals, in addition to love and sincerity. Marriage is an inner and outer 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.¹²

In Islamic law, in general, marriages of minors carried out by their guardians are classified as permissible (permissible) marriages because there are no rules in the

⁹ Sugiyono, (2011). *Metode Penelitian Kuantitatif, Kualitatif, dan Kombinasi (Mixed Methods)*, Bandung, Alfabeta, p. 12.

¹⁰ Ronny Hanitijo Sumitro, (1998). *Metodelogi Penelitian hukum dan Jurimetri*, Semarang, CV. Ghalia Indonesia, p. 27.

¹¹ Zulfiani, (2017). *Kajian Hukum Terhadap Perkawinan Anak Di Bawah Umur Menurut Undang-Undang Nomor 1 Tahun 1974*, Jurnal Hukum Samudra Keadilan, Volume 12, Nomor 2, Juli-Desember.

¹² Tahir Maloko, (2012). *Dinamika Hukum dalam Perkawinan*, Makassar, Alauddin University Press, Cet. I, p. 30.

sources of Islamic law, namely the Qur'an and Hadith that prohibit underage marriage.¹³

In article 2 paragraph 1 of law number 1 of 1974 concerning marriage, namely marriage is legal, if it is carried out according to the law of each religion and belief, in accordance with the sound of article 2 of law number 1 of 1974 mentioned above. Therefore, marriage for Muslims in Indonesia is valid if it has been carried out in accordance with Islamic law and has fulfilled the conditions specified in the marriage law.¹⁴ So a marriage is invalid and void if it is held without fulfilling the requirements and pillars that have been determined in law number 1 of 1974 and the Compilation of Islamic Law.

The marriage law provides a limit on the age of marriage as stated in article 7 paragraph 1, that "marriage is only permitted if the man has reached the age of 19 (nineteen) years." Then in article 22 it is stated that marriages are carried out where one party or both parties are still minors, then the marriage can be annulled. However, in certain circumstances the marriage law provides a way out, namely if such a marriage cannot be avoided, the marriage can be held after the person concerned has obtained dispensation from the appointed official.

The age of marriage, especially for women, is not explicitly stated in the Qur'an or the Hadith of the Prophet, so girls at an age where they do not understand the meaning of being married when married, then the marriage is valid. However, modern scholars consider it necessary to provide a minimum age limit for marriage for reasons of benefit. Underage marriage is a phenomenon for some Muslim communities because fiqh is considered valid without considering psychological maturity and reproductive organ maturity.

One of the conditions for marriage according to Article 7 of Law Number 1 of 1974 concerning Marriage is: Marriage is only permitted if the man has reached the age of nineteen and the woman has reached the age of sixteen." Determination of age limits for a marriage is intended to maintain the health of husband and wife and their offspring. For this reason, a prospective husband and prospective wife must be able to show the correct age at the time the marriage will take place.

Underage marriage can be interpreted as a marriage in which the partner does not meet the requirements or one of the partners is still a teenager, or a marriage that does not reach the age limit set by the laws and regulations to carry out a marriage.

In terminology, marriage is defined as a sacred and sacred institution where men and women are intertwined in a very strong bond to form a family that is *sakinah mawaddah wa rahmah*. However, child marriage has the opposite effect, because this marriage model has the potential to shake social harmony, because there are many cases where early marriage results in violence and deprivation of rights, child trafficking and other crimes. In Indonesia, the case of underage marriage is not a new

¹³ Winardi Triyanto, (2013). *Dampak Pernikahan di Bawah Umur dalam Perspektif Hukum Islam dan UUU Nomor 1 Tahun 1974*, Lex Privatum, Vol. I, No. 3 Juli.

¹⁴ Law Number 1 of 1974 concerning Marriage.

problem, this practice has been going on for a long time with many actors not only in traditional and rural communities, but also in big cities.

If the prospective bride and groom have not reached the age of twenty-one, they must obtain a permit as regulated in Article 6 paragraphs (2), (3), (4) and (5) of the Law on Marriage. If it continues, then the marriage law has been violated and is seen from Law Number 23 of 2002 concerning child protection. This can be seen in Article 1 paragraph (1) of Law Number 23 of 2002 which reads: "A child is someone who is not yet 18 years old, including a child who is still in the womb." From this elaboration, it has been very clearly stated that the age limit for a person who is not yet declared an adult, and is still considered a child, is someone who is not yet 18 years old, in accordance with what is stipulated in this Law.

Article 4 states that: "every child has the right to be able to live, grow and develop and participate fairly in accordance with human dignity and protection from violence and discrimination." This is the basis of how a child's rights must be prioritized according to their portion, without being hindered by anything. Marriage that is carried out on a child will limit the movement of the child, which is due to the marriage bond. Even though the husband does not restrict the movement of the child he has married, the label that has been embedded in the eyes of the girl's peers will be labeled differently, which will result in discrimination between her playmates. This should be avoided so that underage marriage does not occur without consideration.

The conditions that must be met to carry out a marriage according to Law Number 1 of 1974 are as stated in Article 6 to Article 11, namely as follows: a). There is agreement between the bride and groom; b). There is permission from both parents or guardians for the prospective bride and groom who are not yet 21 years old; c). The age of the prospective groom has reached 19 years and the prospective woman has reached 16 years; d). Between the prospective groom and bride there is a blood or family relationship that is not allowed to marry; f). Not in a relationship with the other party; g). For husbands or wives who have been divorced and then remarried to each other and divorced again for the second time; h). There is no waiting time for a widowed bride-to-be.

Underage marriage is not a natural thing and can just happen. This marriage can occur because of supporting factors, including the wishes of parents. Acts committed by parents in marrying minors is a legal problem which in the aspect of legality there are different arrangements. When viewed from positive law in Indonesia, the act of marrying a minor is an act that violates the law or can be said to be legally illegal. Several laws and regulations oppose the occurrence of child marriages.

The minimum age limit for marriage for citizens is in principle intended so that people who are about to get married are expected to have mature thinking, mental maturity, and adequate physical strength to build a family. So that household rifts that end in divorce can be avoided, because the husband and wife have a more mature awareness and understanding of the purpose of marriage which emphasizes aspects of

inner and outer happiness. However, underage marriage is still common in society even though it legally violates the laws and regulations.¹⁵

2. Sanctions for Criminal Acts of Falsification of Birth Certificates in Underage Marriages

Regulations regarding birth certificates are contained in Law Number 23 of 2006 concerning Population Administration (Law Adminduk), as amended by Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration (Law 24 /2013).

The definition of a birth certificate, according to the Legal Dictionary compiled by M. Marwan, and Jimmy P. are: Birth certificate; an authentic deed issued by the civil registry office which has perfect legal force before a judge, provides legal certainty, determines a person's legal position and has an unlimited validity period; a deed made by a civil registry officer containing information about the birth of a child and evidenced in the civil registry register.

The Compilation of Islamic Law through Article 12 paragraph (2) states that a marriage can be annulled, not only mistaking the husband or wife but also including fraud. Fraud is not only perpetrated by men, but also by women.¹⁶

The men usually commit fraud in the form of identity fraud, for example the man has been married before but is said to be a virgin or other forms of scheming, so that the marriage can take place. Deception perpetrated by women usually hides their flaws, for example saying there is no physical disability, but in reality this is not the case.

From a juridical point of view, falsification of marriage certificates has two possibilities, namely; Marriage which is executed based on a fake certificate can be requested for its annulment. If the cancellation is not requested, then the marital status remains valid. Thus it can be seen that the consequences of falsifying marriage certificates are crimes that occur in the field of civil law ending with criminal law, namely violating the provisions of the Articles in the Criminal Code as stated in Articles 253, 264, 266, 267, 268, 269, 270, 271, 274, 275 and supplemented by Article 242 concerning perjury and perjury.

Counterfeiting according to Indonesian law in the criminal law code (KUHP) regarding forgery of letters contained in article 263 paragraphs 1 and 2, which reads:

- a. Whoever makes a forged document or falsifies a document that could lead to a right, an agreement, or a debt waiver, or that is meant to prove something, with the intention of using the letter as if its contents were true and not forged, is

¹⁵ Yuli Adha Hamzah, Arianty Anggraeny Mangarengi, Andika Prawira Buana. (2020). *Analisis Yuridis Perkawinan Dibawah Umur Melalui Kewenangan Kantor Urusan Agama*, Vol 9, No, 2, Oktober, pp 119-128.

¹⁶ Muhammad Jawad Mughniyah, (1994). *Al-Fiqhu Madzahibil al-Khamasah*, Jakarta, Basrie Press, p. 28.

threatened with a maximum of six years in prison, because falsifying a letter can cause harm.

- b. Threatened with the same punishment, whoever deliberately uses a forged or forged letter pretending to be real, if the use of the letter can cause harm.

Article 264 paragraph 1, which reads: "Forgery of a letter is punishable by a maximum imprisonment of eight years, if it is committed against: a). Authentic deeds; b). Debt certificates or debt certificates from a State or part thereof or from a public institution; c). Sero letters or debts or certificates of holdings or debts from an association, foundation, company, or airline; d). Talon, proof of dividend or interest from one of the letters described in 2 and 3, or proof issued in lieu of the documents; e). Letter of credit or trade letter intended for circulation." Meanwhile, the Indonesian Civil Law (BW) reminds that marriage is an engagement. Therefore, an engagement can be canceled if one of the parties conducting the engagement commits fraud, so that the engagement can be canceled. This is in accordance with Article 1449 of the Indonesian Civil Code which reads: "agreements made by coercion, oversight or fraud, issue a demand to cancel them."

If this act causes harm, it can be threatened with a criminal penalty of Article 266 of the Criminal Code (KUHP):

1. Whoever orders to enter false information into an authentic deed concerning something whose truth must be stated by the deed, with the intention of using or ordering another person to use the deed as if the statement is in accordance with the truth, shall be threatened, if the use causes harm, with imprisonment for a maximum of seven years.
2. Anyone who intentionally uses the deed as if the contents are in accordance with the truth, is threatened with the same punishment, if because of such use it can cause harm.

In addition, the act committed can also be subject to criminal threats in accordance with the provisions of Article 93 of the Administrative Law. It is as stated that: "Every resident who intentionally falsifies letters and/or documents to the Implementing Agency in reporting Population Events and Important Events shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of Rp. 50 million."

However, the important thing to remember here is that the birth certificate issued must still be considered to be true, until there is a court decision that has inkraacht proved otherwise. So if at the trial of a divorce case, while one of the spouses does not admit that the contents of the child's birth certificate are wrong, then the contents of the certificate must still be considered correct until another court decision which has permanent legal force, cancels the birth certificate or states otherwise.

From the Criminal Code above, it can be concluded that counterfeiting is a form of criminal offense, where the perpetrator will be subject to sanctions in accordance with the above paragraph. From this, it can be said that the identity counterfeiting law is prohibited or not allowed. Meanwhile, counterfeiting according to Islamic law is one

of the despicable acts that are prohibited by religion. Counterfeiting is a form of lying that can harm many things. Therefore, the act of forgery is a disgraceful act (moral madzmumah) which if someone does that, it is the same as violating the rules of Allah SWT. The prohibition of lying has been stated in the Qur'an, Al-hadith and at the same time in the rules of Fiqhiyah.

Identity is the identity that exists in every individual. However, with identity falsification, someone can falsify their personal data for an interest, especially in falsifying the personal data of minors to carry out a marriage. This is something that is common in society so that their child's marriage does not become an obstacle in the future in terms of age.

The falsification of the identity of minors in marriage has become a hereditary thing every year. The reason is because of matchmaking and fear of promiscuity, so parents choose to immediately marry off their underage children. However, parents still often neglect the preparation for the physical and mental maturity of the child in entering a new household, so that what often happens in marriage is threatened with a rift. Unmitigated parents will match and do everything possible to realize their child's marriage even though the child is still a minor by falsifying the identity of the child's personal data without thinking about the consequences they will face.

Falsification of the identity of minors in marriage, which means marriages that have not yet reached the age of maturity to carry out a marriage. What is meant by underage marriages here are children who get married but do not match their data or in other words falsify personal data to get age compatibility in accordance with established regulations, namely the age that has not been sufficiently falsified to the age of 17 to 20 years.

From the existence of identity falsification, it will be subject to legal consequences. Legal consequences are the result of an action taken to obtain a result desired by the perpetrator and which has been regulated by law.

Since the promulgation of state law that regulates marriage issues, namely Law Number 1 of 1974 concerning Marriage. To be able to realize the purpose of marriage, one of the conditions is that the parties to the marriage are physically and mentally mature. Therefore, in Law Number 1 of 1974, the minimum age limit for marriage is determined. The provisions regarding the minimum age limit are contained in Chapter II Article 7 paragraph (1) of Law Number 1 of 1974 which states that "Marriage is only permitted if the man has reached the age of 19 years and the woman has reached the age of 16 years". From the existence of this age limit, it can be interpreted that Law Number 1 of 1974 does not require the implementation of underage marriages.

D. CONCLUSIONS

Falsification of identity (age) in marriage which is clearly a violation of the law certainly has a detrimental impact, even though it has been prohibited but there are still perpetrators who commit age falsification. People who do this are often aware of the impact of what they do.

The solutions to prevent identity falsification of minors in marriage are:

1. Raise a high awareness of parents towards a better future for their children, which is a proper education because on average those who are married can no longer continue their higher education because marriage is not the only way to achieve a better future for their children.
2. In order for public awareness to grow, it is necessary to have socialization from KUA on the impact of underage marriage because from what researchers have heard that socialization from KUA is very rarely done. There are times when socialization only occurs once every five years. Moreover, it is not certain that what is socialized is about underage marriage, therefore the role of the KUA is needed so that it is beneficial to the community. Apart from that, there is a need for understanding to the public about the impact of identity falsification if it is known by the authorities in this case are the police and people who feel aggrieved.

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