

Effectiveness of Implementation of Criminal Sanctions on Impersonation Deed Marriage (Divorce Case Study in the Province Jambi)

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Abstract

Proving criminal against forgery of identity, can be used as a base to do a divorce between a husband by his polygamous wife to the Religious Court, either requested by the first wife or wives polygamy. State through legislation already provides legal protection, both on the wife whose husband's polygamy under a false identity, or without a valid license from himself or from the Court, the wife of polygamy truly feel "been deceived" by the husband, so that to end marriage to divorce.

Keywords: Identity fraud, Effectiveness of Application of Criminal Sanction

1. Introduction

For the husband who wanted to practice polygamy, but believes it would be difficult to ask for permission from the wife, and the permission of the Court as well as the official supervisor for civil servants, in the absence of reasons really urgent appropriate legislation, tend to take a "shortcut" that violates the law, namely forgery of identity.¹

In order to implement the second and subsequent marriages, the various modes of identity fraud acted by the husband. There are falsified identity, which actually had a wife, but claimed not married. There is also a husband who works as a civil servant, falsifying his identity as an entrepreneur. Some even still have a wife, but claimed to be a widower who "divorced dead", by making a false death certificate, when the first wife is actually still alive.

Related to this research where acts of falsification of identity in the marriage certificate lead to criminal sanctions under Article 93 of Law No. 24 of 2013 on the Amendment of Act No. 23 of 2006 concerning Population Administration. Criminal provisions regarding falsification of identity in the marriage certificate which is letter authentic, as set in the Penal Code specifically in Act No. 24 of 2013 on the Amendment of Act No. 23 of 2006 concerning Population Administration, may be seen clearly that there is a commitment strong of state for population administration put in an important position of law enforcement against criminal acts in the field of population, more forcefully.

Proving criminal against forgery of identity, can be used as the basis for the conduct of divorce to her husband on the wife of polygamy to the Religious Court, either requested by the first wife or wives polygamy. As for the legal basis of the lawsuit divorce is Article 39 paragraph 2 of Law No. 1 of 1974 on Marriage. And another reason to end a marriage is also set in Article 22 of the Marriage Act, outlined that "marriage can be canceled if the parties do not meet the requirements to enter into marriage". While in Article 72 paragraph (2) Compilation of Islamic Law, it is stated that "A husband or wife may apply for annulment of marriage at the time when the course of marriage fraud or wrong about ourselves husband or wife".

Based on the above, it can be seen that the state through legislation already provides legal protection, both on the wife whose husband's polygamy under a false identity, or without a valid license from him and the Court as well as the wife of polygamy truly feel "been deceived" by husbands, so that it wanted to end the marriage that divorce. that in fact, legislation has been clearly and firmly about the legal consequences for anyone either husband or wife, on the use of false identities in the marriage register, which is a criminal charges of forgery of identity, and end the marriage through divorce.

In the case of the first wife learned that her husband was married to another woman or vice versa second wife just found out after marriage that her husband actually had a previous wife or husband deliberately falsified his identity as self-employed when is a Civil Servant, then the first wife to end marriage the husband with a second wife, or wife both wanted to end her marriage to her husband that she already knew had a first wife, filed for divorce done in Court.

The position of both the Religious Court case are almost the same, which is the case in Jambi Religious Courts where the second wife just found out after marriage that her husband had had a first wife before. At the moment after marrying a second wife, that her husband had falsified his identity, in which marital status by claiming to be single. Then Decision Religious Court Muarabulian his case where the husband faked his identity as a single and the job actually is a civil servant and claiming to be self-employed and also the decision of the

¹Ahmad Azhar Basyir, *Islamic marriage law*, UII Press, Yogyakarta, 2000, Pg. 9.

District Court Jambi punish the defendant in terms of falsifying his identity claimed widowers die in case his first wife was still alive.

On case is more or less about the same, the husband deliberately falsified identity on` marriage certificate, this is done to choose the path of the fast polygamous polygamous meet the requirements as stipulated in the applicable legislation. But the wife who feels aggrieved over her husband's identity fraud do not make the cancellation of marriage, but tend filed for divorce in the Religious Court. While the Religious Court in this position is passive means only see formal requirements have been met in the divorce filing and does not see any criminal case is counterfeiting identitas` the marriage certificate itself.

2.Results And Discussion

a. The setting of the acts of identity fraud in the marriage register in perspective Indonesian law.

1. Criminal Code.

Article 263 paragraph (1) Criminal Code:

- (1) Whoever makes false letter or forged, to publish something right, something agreements (liabilities) or something for debt relief, or which may be used as a descriptor for a deed, with the intention of using or encouraging others to use the papers as if the letter was genuine and not faked, so if using them can bring something disadvantages convicted of forgery, with imprisonment for a six-year-old.
- (2) The same punishment was also punished, whoever knowingly uses a false or forged letter was as if the letter was genuine and not counterfeit, that it can use mendatangkan something losses.

In order to be punished by this article, then at the time it must be forged with the intention of using or send someone else used the letter as if genuine and not fake. In addition the user must be able to incur losses. the intention is not necessary losses that actually already exists, new possibilities will only loss that is enough. Losses in this article is not only the material loss but also loss of social field, decency, honor and others.

Further proving the crime, given for making the lawsuit marriage between husband and wife poligaminya Religious Courts. Thus, it can be concluded that the legal norms of conduct identity fraud on the marriage certificate in perspective Indonesian legislation, regulated in the Criminal Code and the Marriage Act.¹ Because the marriage certificate is an authentic act, the act of identity fraud in the marriage certificate is a criminal act of impersonation in an authentic deed, as referred to Article 266 of the Criminal Code.

- (1) Forgery punishable by a maximum imprisonment of eight years, if committed against:
 - a. authentic or legitimate documents;
 - b. certificate of debt of a country or part thereof, or of a public institution;
 - c. letter stock or debt or stock or debt certificate from an association, foundation, company or airline;
 - d. talon, receipt of dividends or interest from one of the letters described in subparagraphs (b) and (c), or the receipt issued in lieu of letters;
 - e. letter of credit or letter of trade are provided for distribution.
- (2) Punishable by the same one who deliberately put the letter in paragraph (1), the contents of which are not genuine or forged as if true and not falsified, when the forgery that can result in losses.

Therefore doer of the deed falsification of identity in a marriage certificate is liable to a maximum imprisonment of seven years. In the Marriage Act, the act of identity fraud in the marriage certificate is an act that violates the terms to enter into marriage, so that the polygamous marriages, the wife can apply for the cancellation of the first marriage of her husband with a second wife². With such an arrangement, the state intends to provide legal protection to the continuity of marriage and the future of children in marriage with his first wife.

However, the purpose of the protection of the law, can not be achieved effectively, because the Marriage Act does not regulate clearly and unequivocally about the procedure or the procedure for proving identity fraud actions in the marriage certificate as the basis for the imposition of a marriage annulment decision. The absence of setting clear and unequivocal about the cancellation procedure marriage as a result of identity fraud, especially those committed by the husband that polygamy became known only after the husband of death, has caused legal uncertainty, injustice law, and the lack of benefit of the law, especially for his first wife and children.

2. Indonesian Civil Code.

In the draft Civil Code Article 1868 reads "An authentic deed is a deed made in the form prescribed by law or before the competent public authority for it in the deed was made". Marriage certificate is a form of authentic deed. Under the provisions of Article 1868 of the Civil Code, authentic deed is a deed made in the form prescribed by law or in the presence of competent public authority for it in the deed was made. The act of faking a marriage license is a criminal offense in the category of crime. The perpetrator threatened with imprisonment

¹Hari Sasangka, *Law of Evidence in Civil Case for Students and Practitioners*, Mandar Maju, Bandung, 2005, Pg. 13.

²Sayuti Thalib, *Indonesia Family Law*, UI Press, Jakarta, 1989, Fifth Print, Pg. 47.

of eight years.

The new deed known forgeries in an advanced society, where certain data traffic used to facilitate relationships within the community. The act of forgery can be classified first in the group kejahatan "Fraud"; so that not all acts are forgeries. The act of forgery crime groups classified as fraud if someone gives an idea of something description of the goods as if the original or true, whereas the real or the truth did not have. Because this data overview others deceived and mempercayanya that the circumstances described above items / mail / data is valid or genuine.

Falsification of the writing / data occurs when the contents or the data is incorrect. Understanding Identity is identification / mark the origin of someone Make a fake letter was draft a letter or article in its entirety. The existence of this letter because it was created artificially. The objective of this letter to indicate that the letter seemed to come from someone other than the author (actor). This is called counterfeiting meteriil, origin of the letter is a fake.

Forged deeds done by making the changes without the right (without permission eligible) in a letter or writing, which can change the signature as well as to the contents. No matter, that it previously was something not right or something right; changes in the content of which is not true to be true is a forgery.

3. Law Number 24 Year 2013 on the Amendment of Act No. 23 of 2006 concerning Population Administration.

One of the criminal provisions in the Law on Population Administration is directly related to law enforcement efforts to suppress counterfeiting residence documents. is Article 93. Article penal provisions referred to in principle provides that:

Every resident who deliberately falsified letters and / or documents to the Implementing Agencies in reporting the events of Population and Milestones shall be punished with imprisonment of 6 (six) years and / or a fine of not more Rp.50.000.000,00 (fifty million rupiah).

The provisions of Article 93 of the Population Administration Act mentioned above, is important because the human factor in this case falsifying citizenship documents, is one of the most decisive factors of false citizenship documents, which is the main indicator to measure the success of the population administration settings. In other words, the circumstances of the offender population falsification of documents mentioned in falsifying citizenship documents will have a direct impact on the occurrence or non-occurrence of falsification of personal documents.

In order to carry out a review of the clarity and firmness of the formulation of a criminal act in Article Article 93, the authors conduct an assessment of each element of the criminal offense in question so that it can be concluded whether the Law on Population Administration has set a clear and straightforward about the elements of crime "falsifying letters or documents".

The Elements of "Every resident who deliberately falsified letters or documents"

The first subjective element of Article 93 is "Every resident who deliberately falsified letters or documents". This element has a position as a principal or legal subject of a criminal act "falsifying citizenship documents, resulting in falsification incident population". In the subjective element "Every resident who deliberately falsified letters or documents," they have or consist of or constructed by two sub-elements of the sub-elements of "every citizen" and a sub-element "demographic events". Every resident who deliberately falsified letters or documents or according to Indonesian dictionary called "counterfeiting residence documents" ¹ is the party most responsible for the events of forgery of residence with all the legal consequences arising when events occur counterfeiting population.

Prior to the analysis of the clarity and firmness of formulation sub criminal elements "Every resident", need to be discussed beforehand obligations and rights that must be fulfilled by a resident.

The Elements of "Demographic Events"

As discussed in the previous chapter, especially in the general review of crime and criminal responsibility, that the events of residence, which referred to the events of residence is the event of a change of address, the event comes resident in the territory of the unitary state of the Republic of Indonesia, the event moved to come between countries, events residents of border crossers, events vulnerable population census population administration and reporting events of the population who are unable to register itself.

The Elements of "Forgery"

Furthermore, the third criminal elements inside in crime "forgery" as stipulated in Article 93 of Law on Population Administration, the objective element in the form of "letters and documents", the authors argue that the element was sufficiently clear and unequivocal. This means that there has been correspondence between the generally accepted sense, the world's prevailing law of the size or purpose of what is called a "forgery".

b. Effectiveness of Implementation of Criminal Sanctions on Impersonation Deed Marriage (Divorce Case Study in The Province Jambi)

¹Ministry of National Education, *the Big Indonesian Dictionary*, Third Edition, Balai Pustaka, Jakarta, 2003, Pg. 540.

To determine the effectiveness of the application of criminal sanctions identity fraud on the marriage certificate can be seen in the case study below Religious Court ruling:

1. Decision No: 67/PID.B/2013/PN.JBI

That the defendant Chairul Anwar Bin Yahya Ahmad on 18 April 2011, or at least in April of 2011, held at the Office of Religious Affairs District of Kota Baru Jambi city, or at least somewhere else is still included in the legal area of Jambi District Court, ***“have included a false statement in an authentic deed that the truth must be stated by the deed with a view to using them as if the information had been given it is in accordance with the truth and if the certificate of use can result in losses,”*** conducted in the following manner:

- a. Starting on Sunday, November 13, 1994 the accused is married to the witness H. Maryani Bint Muhammad Amin (Alm) at home parents Maryani witness H. Bint Muhammad Amin (Alm) in Kampung Manggis RT.10 Sungai Asam Pasar Jambi City in accordance with the Deed Marriages Number: 11 / II / 1995 dated 18 April 1995 which witnessed Mr. Zuhdi Bin M. Amin (Alm) and both parents Maryani witnesses and witnesses of the marriage to the defendant Maryani blessed with 3 (three) children.
- b. But in April in 2011, the defendant met with David in Nipah Panjang speedboat trip to Jambi and asked for help because the accused has a wife but wanted to remarry Megawati at a cost of Rp. 1.500.000, - (one million five hundred thousand rupiah) and at that time the defendant also provide Rp. 1.000.000, - (one million rupiah) to David and the remaining Rp. 500,000, - (five hundred thousand rupiah) will be given after his marriage book has been published.
- c. That later the defendant gave identity and photograph the defendant and sister Megawati to David and to draw up a form to be used for the terms of marriage defendant with sister Megawati namely the letters with the code N1, N2, N4, on behalf Chairul Anwar and Megawati, N6 (certificate of death of the husband / wife that on behalf Chairul Anwar divorced death by his wife Siti Aminah (Alm) not on behalf Maryani while Megawati has divorce to death by her husband named Heri Purnomo and the letters were all issued by the Village Jambi South, signed and stamped by the head of the Pasir Putih Village named Suropto on April 5, 2011 while Suropto served as head of the Pasir Putih Village South Jambi sub-district on August 23, 2011 as a statement of inauguration Number: 821.24 / 018 / BKD.
- d. That then the defendant's Megawati and David's house KUA employees Jelutung District of Jambi Zainal Abidin Bin Mukti (Alm) at Jalan Lorong Iswahyudi Fertile No. 11 RT.008 Village Pasir District of South Jambi Kota Jambi to ask for help maintenance of their marriage, when it Zainal Abidin inquire the status of the defendant and the defendant if the defendant answered Megawati widower while Megawati status is a widow since her husband died was named Heri Purnomo. Then they submit the requirements of marriage to Zainal Abidin form of letters N1, N2, N4 and N6. After that Zainal Abidin asked "Wanna Marry Where" answered David, "they have wanted the marriage hall, up hall where, as long as not in the hall Jambi Selatan" and Zainal Abidin answered "yes" then Zainal Abidin inquire about the status of Megawati what true status in accordance with the letter In response to this requirement the defendant and Megawati "yes it's true biographical data and status" after the daud asking how the marriage registration fees, Zainal Abidin said the fee is Rp. 30.000, - (thirty thousand rupiah). After the defendant through David gave to Zainal Abidin Rp. 500,000, - (five hundred thousand rupiah) and Zainal Abidin asked why charges provided immense answered defendant as a thank you and the cost to transport the maintenance of their wedding.
- e. The next day Zainal Abidin registered their marriage is not in KUA Jelutung, but enrolled at KUA District of Kota Baru to submit terms for a wedding that has submitted the accused but there is a shortage of a letter of recommendation to move a marriage on behalf of Megawati afterwards Zainal Abidin who takes care of the letter. Furthermore, on 18 April 2011 the defendant and Megawati married in KUA District of Kota Baru as a marriage certificate No. 460/02 / V / 2011.
- f. That the actions of the defendant entered into a marriage with Megawati on 18 April 2011 at KUA District of Kota Baru accordance marriage certificate defendant with Megawati Number: 460/02 / V2011 dated 18 April 2011 when the accused knew that the marriage has existed, namely on Sunday 13 November 1994 the defendant was married to Maryani Bint Muhammad Amin H. (Alm) at home parents Maryani Bint Muhammad Amin H. (Alm) in Kampung Manggis RT. 10 Sungai Asam Pasar Jambi City in accordance with the marriage certificate No. 11 / II / 1995 dated 18 April 1995 a barrier legitimate for the defendant to marry again so that the actions of the defendant harming Maryani the time of the wedding defendant with Megawati held Maryani still the legal wife of the accused. ***As stipulated and criminalized Article 279 paragraph 1 to 1 of Criminal Code.***

The Imposing of criminal Article 279 paragraph 1 of the Criminal Code in its formulation stating whoever is every person as a subject of law who perform actions and be accountable for his actions. Proposed as a suspect in this case is Chairul Anwar Ahmad bin Yahya with your identity in the case file. Thus these elements have been met by Chairul Anwar to be punished.

The next element to mate with the knowledge that the marriage had been there from the other side and become a legitimate impediment for him will do remarry. This element also has been met and that Chairul Anwar and Megawati has held the marriage at KUA District of Kota Baru Jambi City on April 18, 2011 based on the marriage certificate No. 460/02 / V / 2011 issued by KUA Kota Baru Edinburgh in the truth at that time the marriage became an obstacle for the accused to get married again because the defendant was still married to Maryani legally married on November 13, 1994.

In addition to the elements contained in Article 279 which says people should know that he had never been married and that marriage is still not released. This element has been fulfilled by the defendant Chairul Anwar until it is proved at the time his marriage with the accused Megawati still a legitimate husband of Maryani. Besides this, the marriage became separated according to Article 199 of the Code of Civil Code, among others: a). because of death, b). because someone leave them all for 10 years and was followed by the marriage of one with another person, c). because there is a verdict of divorce by a judge, and d). for ordinary divorce according to the rules in the Book of the Law of Civil Law.

District Court Jambi The obvious application of criminal sanctions against the perpetrators of identity fraud in the marriage certificate has been made by the judges, but in the application of Article its Prosecution still use the threat contained in the Law on Population Administration while we know at the time of the crime of identity fraud this already applies the laws of population administration.

The judges in deciding a case must be consideration of the aggravating circumstances and the mitigating circumstances. Related to the decision No. 67 / Pid.B / 2013 / PN.JBi is as follows:

Reasons Incriminating: Defendant into marriage with another wife without the permission of legitimate

Reason Lighten:

- a. The defendant admitted frankly his actions so as not to complicate the trial.
- b. The defendant has not been convicted.
- c. The defendant is the head of the family.

2. Decision No: 0195/Pdt.G/2014/PA.Mbl

Based on the above two decisions Religious Court concluded that :

- a. Plaintiffs and defendants absolutely have disputes and quarrels mind continuously caused because the plaintiff was disappointed because he felt had been deceived by the defendant before marriage and the defendant admitted Single run away from responsibility as a husband.
- b. The principal factors that greatly affect the integrity of the household because it has resulted in the emergence of distrust one another between the plaintiff and the defendant as husband and wife.

Everyone there is a tendency to perform an action, be it benefit him or harm him. All were based on the factors that cause it. Similarly, someone who forge the identity of the guardian in the marriage which was also preceded by a factor does the identity fraud. According to the Religious Court Judge in Jambi, says that:

The factors that cause people to commit identity fraud on the marriage certificate is :

1. The existence of cheating between a prospective bride to be married in *KUA*.
2. The desire is polygamous by one of the prospective bride to be married.
3. The difficulty to get permits polygamy.
4. Obscurity one bride-related identity spouse and family.¹

Related problems identity fraud on the marriage certificate the Religious Courts can not provide criminal sanctions that have been made by the defendant because of the Religious Courts decide civil cases only in connection with a divorce lawsuit. Parties to the religious court can only suggest to the claimant to be told what the defendant told the police related to the crime of identity fraud committed by the defendant in this case is her husband.

Decisions related to Religious Court divorce is conducted at the request of one of the parties who filed for divorce. This is because the plaintiffs just filed for divorce in order to let go of their marriage. And in general, filing divorce does not report the crime that has been done him by reason of the identity fraud perpetrator is the father of their children. Further efforts should be made in order to minimize identity fraud is :

- a. Couple bride investigate the true identity of the prospective partner and his family. This is to be aware of where her husband still has a valid marriage bond with another woman before the wedding is done, so there is no forgery of identity not only hurt the first wife and children are also the second wife.
- b. *KUA* Parties administration concerned to check the identity of the bride and the two elderly couples bride and calling and interviewing both the bride and her parents. Office of Religious Affairs is a competent agency to not do or refuse to conduct a marriage if the impersonation by the husband.
- c. *KUA* Parties in order to socialize or outreach to the community about the importance of investigating the prospective partner and family before the wedding. This is done so that people do not easily commit identity fraud to achieve his desire contrary to the Act resulting loss to the community.

¹Nurmadi Rasyid, Religious Court Judge Jambi, Interview dated 5 September 2016.

d.*KUA* Parties in order to coordinate with relevant parties relating to the identity of the population. Coordination is done primarily by officials where the offender resides, in order to minimize fraud from identity fraud.¹

3. Conclusion

The setting of the acts of identity fraud in the marriage register in perspective Indonesian regulations stipulated in the Penal Code, the Code of Civil Code and Law No. 23 of 2006 concerning Population Administration and the effectiveness of the application of criminal sanctions identity fraud on the deed marriage is based on two (2) Decisions courts that became the case study is the Religion Court decision related to divorce is done at the request of one of the parties who filed for divorce. And in general, filing divorce does not report the crime that has been done him by reason of the identity fraud perpetrator is the father of their children. Furthermore, in the example of Jambi District Court No. 67 / Pid.B / 2013 / PN.JBI turns out the judge has imposed sanctions for the perpetrators of criminal impersonation of a marriage certificate while still using the Criminal Code at the time of the offense do enacted Law on Population Administration.

References

- Ahmad Azhar Basyir, 2000, *Islamic marriage law*, UII Press, Yogyakarta.
- Ministry of National Education, 2003, *the Big Indonesian Dictionary*, Third Edition, Balai Pustaka, Jakarta.
- Hari Sasangka, 2005, *Law of Evidence in Civil Case for Students and Practitioners*, Mandar Maju, Bandung.
- Criminal Code.
- Civil Code.
- Sayuti Thalib, 1989, *Indonesia Family Law*, UI Press, Jakarta.
- Law No. 1 of 1974 on Marriage.
- Law Number 24 Year 2013 on the Amendment of Act No. 23 of 2006 concerning Population Administration.
- Zuhri Hamid, 1998, *Principles of Islamic Marriage Law and the Marriage Law in Indonesia*, Bina Cipta, Yogyakarta.

¹Nurmadi Rasyid, , Religious Court Judge Jambi, Interview dated 5 September 2016.