



Inconsistency of law enforcement against the criminal action of obstacle marriage according to article 279 of the KUHP in Aceh Province

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Abstract

Obstacle marriage is a criminal act prohibited in Article 279 of the Criminal Code, categorized as a crime of origin of marriage. Law enforcement against perpetrators of criminal acts mentioned in Article 279 of the Criminal Code is still experiencing inconsistencies, considering that crimes against the head of marriage have different interpretations from law enforcers. The purpose of this study is to look at the law enforcement process against criminal acts as an impediment to marriage in Aceh and to find out the reasons for the inconsistency of law enforcement against marriage crimes. The method in this study uses an empirical approach, which this approach combines legal and empirical (field) studies. Data collection techniques in this study using interviews. The results of the study indicate that law enforcement carried out by law enforcement officers such as the police, prosecutors and courts still have different understandings of the elements of criminal acts in Article 279 of the Criminal Code. This difference can be seen from the understanding of Article 279 of the Criminal Code regarding barriers to marriage. The lack of consistency in the law enforcement process for violations of Article 279 is because the law in Indonesia does not adhere to a legally binding system of jurisprudence in imposing criminal charges so each judge can interpret the article differently. In this regard, policymakers should provide clear conditions regarding violations of the origin of marriage in Article 279 of the Criminal Code, so there is no interpretation among law enforcement officers.

Keywords: obstacle marriage; inconsistency; law enforcement

Introduction

Indonesia is a constitutional state as stated in Article 1 paragraph (3) of the 1945 Constitution. Based on this mandate, it is appropriate that every activity of the Indonesian people be regulated by law. In this way, guidelines and references in living life and establishing policies become the basis for solutions for the community^[1]. The existence of a source of reference from the 1945 Constitution in determining the direction of law exemplifies values in society. Law is a means of regulating justice and enforcing the norms that exist in society.

The form of legal protection given to the community is regulation regarding marriage and what forms are the basis for crime in marriage. Article 1 Law no. 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage defines marriage, namely "Marriage is a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on Belief in the one and only God".

The purpose of marriage is to obtain happiness, but there are violations committed in marriage. One form of violation in marriage, namely as stated in Article 279 paragraph (1) of the Criminal Code with its meaning, namely that it can be sentenced to a maximum of 5 (five) years in prison if holding a marriage knowing that the marriage has become a legal obstacle to doing so. This article is a source of punishment that can be imposed on perpetrators who carry out marriages, even though the perpetrators know that the marriage carried out has had previous obstacles. Barriers can be interpreted as indicators that cause the marriage to become forbidden to do. The punishment with weights

referred to in Article 279 paragraph (2) can be imposed if the marriage carried out is hidden from other parties, even though the existing marriage is an obstacle to carrying out further marriages^[2].

The mention of double huwalijke or bigamy in the Dutch Criminal Code is because the culture of Dutch society only recognizes monogamous marriages so they consider marriages carried out in polygamy or marrying more than one partner to be the basis of a criminal act. Indonesia, which has a Muslim majority, believes that men may marry more than one woman, as part of their religious symbols. Therefore, among them, a man only commits a criminal offense under Article 279 of the Criminal Code, if he enters into a 5th (fifth) marriage after 4 (four) legal marriages. For the wife, marrying a second time is already a crime^[3]. Even though in Islam a man can have more than 1 marriage (polygamy), he does not necessarily do it with his will.

Article 9 Law no. 16 of 2019 concerning Amendments to Law Number 1 of 1974 regarding Marriage states, "A person who is still bound by marital ties with another person cannot remarry, except in the case stated in Article 3 paragraph (2) and Article 4 of the law this". Article 3 of Law no. 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage states that:

Article 3

1. Basically, in a marriage, a man can only have one wife.
A wife can only have one husband
2. The court can permit a husband to have more than one wife if the parties concerned wish

Article 4

1. In the case of a husband having more than one wife, as referred to in Article 3 paragraph (2) of this Law, he is obliged to submit an application to the Court in the area where he lives.
2. The court referred to in paragraph (1) of this article only permits a husband to have more than one wife if:
 - a. the wife cannot carry out her obligations as a wife;
 - b. the wife has a physical disability or an incurable disease;
 - c. wife cannot bear children.

In other words, more than one marriage may not be carried out based on the wishes of one of the parties but must comply with applicable legal provisions. For example, having a permit from the party concerned, but if the license is not granted, you can see other requirements as stated in the laws and regulations.

Crimes against Article 279 of the Criminal Code are still rife. Several cases regarding crimes of origin of marriage occurred in Regencies/Cities in Aceh Province, namely: 7 (seven) cases in Banda Aceh City, 4 (four) cases in Aceh Besar District, 5 (five) cases in Aceh District Jaya, 20 (twenty) cases in Pidie District, and 4 (four) cases in West Aceh District in the 2017-2019 period. Each of these cases has the exact chronology, namely the Defendant who is still bound by marital status and has another marriage.

Law enforcement against crimes of origin of marriage in its implementation often experiences inconsistencies in the application of the articles governing crimes of origin of marriage, especially in the crime of committing marriage. At the same time, it is known that existing marriages or marriages are a legal obstacle to remarriage as stipulated and subject to criminal penalties in Article 279 paragraph (1) 2 of the Criminal Code due to different interpretations from law enforcers both at the level of investigation, prosecution and examination at trial resulting in 2 (two) forms of decisions namely acquittals and sentencing decisions.

Inconsistencies in law enforcement against crimes of the origin of marriage also occur in Aceh Province, which exists. However, with the same chronology, there are different decisions. Some defendants were found guilty and there were also acquittals and acquittals in some of these cases. In the law enforcement process, several things become indicators of the success of the law enforcement process itself. According to Soerjono Soekanto, there are 5 (five) factors that can influence the law enforcement process itself, namely law enforcement factors, the law itself factors, infrastructure factors, community factors, and cultural factors^[4]. So it takes a concrete effort to overcome the causes of these inconsistencies.

The inconsistency of law enforcement against crimes of the origin of marriage has shown the existence of legal uncertainty and can hurt the sense of justice that lives in society. Supposedly, with a similar case anatomy, the results of the law enforcement process must also be the same. Based on the description above, the problem in this research is why there is inconsistency in law enforcement against crimes of origin marriage in Aceh Province

There are articles related to previous research, namely: (1) M.Yusuf and Reza Okva Marwend with the title Journal of Application of Criminal Sanctions Against Offenders of the Origin of Marriage According to Article 279 Paragraph (1) of the Criminal Code: Case Studies No 830/Pid.B/2017/Pn

Pdg. This study only discusses the judge's considerations in imposing a sentence on the perpetrator of the criminal act of obstructed marriage. (2) Sri Muharani and Mahfud with the title Research Journal of Crimes Against the Origin of Marriage (A Research in the Legal Area of the Banda Aceh District Court). This research only examines the factors that cause crimes of origin marriage and looks at the process of imposing a sentence given by the judge. Different from previous studies, the authors put more emphasis on the aspect of inconsistency in law enforcement against the criminal act of obstructed marriage that occurred in Aceh Province.

Research Method

The research method used in this study uses empirical legal research or commonly called non-doctrinal legal research. This approach combines legal and empirical studies. Law is not only reviewed from a written aspect but must look at the norms and realities that exist in society. The data collection technique in this study used interviews conducted with law enforcement officials in Aceh Province.

The sources and types of research data that will be prioritized are based on primary data in the form of data obtained through interviews in the field, while secondary data is divided into primary legal materials, in the form of laws and regulations, secondary legal materials in the form of books, doctrines, journals, as well as tertiary legal materials, in the form of dictionaries and other forms of data.

Result and Discussions

Law Enforcement Against the Criminal Act of Obstacle Marriage in Aceh Province

Community life is greatly assisted by the existence of law enforcement that can provide certainty, justice, and benefit. According to Prof. Sudarto, law enforcement can be interpreted as actions taken due to a suspected crime or guarding against the possibility of a crime occurring. The prevention aspect in law enforcement involves several parties, such as legislators, police, prosecutors, courts, civil service, criminal execution apparatus, and ordinary people. The process of granting punishment gives each of these bodies their respective roles to keep people from committing crimes^[5].

Law enforcement is a real effort by law enforcement officials to realize the legal ideals referred to in legal policies. The legal policy is an idea, method, and ideas, which arise from reactions to violations of the law. According to Marc Ancel, the criminal policy is defined as "the rational organization of the control of crime by society" which means a rational effort from society in tackling crime^[6]. The criminal policy is part of law enforcement efforts. Sudarto defines criminal policy as follows:^[7]

- a. Criminal policy in a narrow sense can be interpreted as the overall principle and method of public reaction to violations by determining criminal aspects.
- b. Criminal policy in a broad sense is defined as the function of law enforcement officials, including the workings of the law enforcers themselves.
- c. Criminal policy in the broadest sense is interpreted as a whole policy, which is carried out through laws and regulations and aims to uphold the central norms of society.

Thus it is clear that criminal law policy is part of law enforcement. Law enforcement can experience problems not only in terms of the rules that are made but also by the functions of law enforcement officials in carrying out the provisions stated in the legislation.

Law is a tool that can be used to engineer society to keep society away from forms of violation. Ensuring the function of law as an aspect of manipulating society to be better is not only by determining the direction of writing laws and regulations but also by ensuring law enforcement that has a sense of justice so that the form of certainty and justice can be felt by the community.^[8] Laws that work are not only part of the function of written regulations, but also part of implementing bureaucrats' activities.^[9]

Regarding the implementation of the law that occurs in society, it is not only determined by the legal awareness factor of the community but also determined by aspects of law enforcement, such as the occurrence of several legal regulations that cannot be implemented properly, due to differences in interpretation of understanding in assessing a crime.^[10] The process of law enforcement in Indonesia is often seen from a different perspective. Communities have their perspective on the process of implementing law enforcement itself. The law will be considered positive if it can be beneficial and the law will also be regarded as negative for people who are harmed by the process of implementing law enforcement.

Problems in the law enforcement process in Indonesia often occur, in terms of the justice system, legal instruments, inconsistencies in the law enforcement process, or problems that arise due to the intervention of power and legal protection. Inconsistency in law enforcement is an important issue that must be addressed immediately. The problem of inconsistency in law enforcement is very serious and must be resolved immediately. The inconsistency of law enforcement will be felt by the community and will harm people's lives.

One form of inconsistency in law enforcement lies in the different perspectives of law enforcement officials in determining a criminal act of obstructed marriage. By definition, an impediment marriage can be interpreted as a marriage that is hindered by the presence of another marriage, so that a person who continues to marry even though it is known that there is an obstruction to the marriage can be subject to punishment as stated in Article 279 of the Criminal Code.

Several cases occurred in the province of Aceh regarding the criminal act of obstructed marriage which was handled by law enforcement officials. Meanwhile, cases of impediment marriages in Aceh occurred in several regencies/cities in Aceh Province, such as Banda Aceh City which has handled 7 (seven) cases, Aceh Besar District has handled 4 (four) cases, Aceh Jaya District has handled 5 (five) cases, Pidie District has handled 20 (twenty) cases, and West Aceh District has handled 4 (four) cases. Several cases concerning the criminal act of impediment marriage experienced inconsistent law enforcement in terms of different decisions, some were sentenced to punishment and some were acquitted. Meanwhile, 3 (three) districts, namely Aceh Besar, West Aceh, and Pidie, remained consistent in their sentencing processes.

The rules in the Criminal Code are inseparable from other rules. About marriage requirements, such as regulations in civil law and Islamic law for adherents of Islam. This

affirmation is explained in Article 2 paragraph (1) of Law no. 1 of 1974 concerning Marriage. Marriages carried out by men and women are carried out based on the teachings of each religion, still having to pay attention to administrative legality, as stated in Article 2 paragraph (2) of the marriage law, namely that every marriage is registered according to applicable laws and regulations.^[11]

Legally politically, Article 279 of the Criminal Code was born based on norms resulting from the Dutch colonial administration. Given that the Netherlands only adheres to single marriage (monogamy), thus prohibiting the practice of multiple marriages. Thus, it is very clear that the civilization of Indonesian society, especially the people of Aceh, adheres to the teachings of Islam. The practice of polygamy has become very widespread in Aceh, and even polygamous marriages are carried out without the consent of the spouse.

Several cases were found related to criminal acts of the origin of marriage caused by the existence of a marriage carried out by a husband without the consent of his wife. Even polygamous marriages are carried out only through the approval of an Islamic boarding school leader. According to Angie Harahap, the number of perpetrators of criminal acts of obstruction of marriage is only based on the legality accepted by the leadership of the Islamic boarding school. The people of Aceh do not know the punishment that will be received as a result of the violation committed so the act only becomes a crime if the wife feels disadvantaged.

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Based on the data obtained, this inconsistency arises due to the perceptions of law enforcers, investigators, public prosecutors, and judges regarding the element of "conducting marriage, even though it is known that the parties concerned cannot remarry due to obstacles from previous marriages. At the level of the Police and Prosecutors' Office, these differences in perceptions can be accommodated and consolidated at the pre-prosecution stage, while at the stage of the trial process Judges have their perceptions according to their authority. It can be seen that the investigators, the public prosecutor, and the panel of judges at the cassation level considered that the "betel marriage" was an act of marriage referred to in Article 279 paragraph (1) 2 of the Criminal Code, while the panel of judges at the calling district court examined and tried this case considers that the element of "holding a marriage" must be a marriage legally recorded by Indonesian positive law.

This difference in perception is the main factor that causes inconsistency in law enforcement against crimes of origin marriage, especially in the crime of committing marriage, while it is known that existing marriages or marriages are a legal obstacle to remarriage as regulated and punishable by crime. in Article 279 paragraph (1) 2nd Criminal Code. It can be seen that the panel of judges at the Calang District Court tried to define the element of "indicting a marriage that is a hindrance to other marriages" using a systematic interpretation method and interpreting it grammatically. The judge interprets the language of "holding a marriage" grammatically and re-interprets it systematically by linking and relating it to other laws and regulations such as Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law.

Judges are given the authority by law to make legal discoveries in solving concrete legal problems because the legal rules governing them are incomplete, unclear, or even non-existent, or also because of very rapid changes in society, they must seek and find the law. This is related to the explanation in Article 279 paragraph (1) of the 2nd Criminal Code which is considered clear enough by law so that the interpretation of judges at the Calang District Court in handling cases as referred to in Article 279 paragraph (1) of the 2nd Criminal Code is not in line with the theory of legal discovery.

The occurrence of inconsistencies in law enforcement resulted in parties who became victims directly or indirectly who were harmed which in this case needed to get legal protection, especially victims who were partners from their first marriage or children born from the marriage as a legal policy that has no other purpose. to realize legal certainty that is just and legal policy becomes a forum for providing legal protection to the community.

As for the formulation of Article 279 paragraph (1) of the 2nd Criminal Code in its explanation, it is quite clear that the elements of the article do not need to be contested anymore. The existence of inconsistencies in law enforcement is not in line with criminal policy, if it is related to the objectives of criminal policy, the formulation of criminal laws and regulations must contain ways to protect the community, and ensure the creation of effectiveness and efficiency of these criminal laws and regulations, to achieve justice, certainty and legal benefits for all levels of society. So that it is considered necessary to hold special training on the application of legal discovery methods, and integrated legal interpretation between judges, prosecutors, and also the police, to equalize perceptions of the elements of the crime of origin of marriage, especially Article 279 paragraph (1) of the 2nd Criminal Code.

Conclusion

Law enforcement is part of maintaining and protecting society from crime by using criminal law policies. The imposition of criminal sanctions referred to in Article 279 paragraph (1) and paragraph (2) of the Criminal Code against the crime of origin marriage can affect the psychological aspects of the perpetrators of crimes so they do not do it. The occurrence of inconsistencies in law enforcement is due to differences in the interpretation of law enforcement officials, both the Police, Prosecutors' Office, and Judges, regarding the element of "holding a marriage" contained in the elements of Article 279 paragraph (1) of the 2nd Criminal Code. Differences in views from law

enforcement officials cannot be separated from the provisions of Article 2 paragraph (1) and paragraph (2) of the Marriage Law which determine the conditions for marriage. Article 2 paragraph (1) determines the validity of a marriage based on the teachings of each religion, while Article 2 paragraph (2) stipulates that marriages must be registered. The difference lies not only in the interpretation of the law but also in the different elements of the criminal act of impediment marriage mentioned in Article 279 of the Criminal Code because Indonesia does not adhere to a system of jurisprudence, so the previous legal decision was not binding, thus each judge can interpret the article differently

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