



SANCTIONS FOR ANNULMENT OF MARRIAGE IN THE CUSTOMARY LAW OF THE PEKANBARU MALAY COMMUNITY

Juswandi

Universitas Islam Negeri Sultan Qasim Pekanbaru

E-mail: juswandi2010@gmail.com

Abstract

The betrothal is conducted before the traditional marriage ceremony is carried out. Betrothal is commonly called an engagement or application process carried out by the male party to the female side. This research was conducted to determine the sanctions in the customary law of the Malay community that apply if one of the bride and groom's parties cancels the betrothal agreement and how the law is carried out. The research uses qualitative methods that are descriptive analysis. This study uses Schleiermacher's romantic hermeneutics, which is a text analysis approach. Based on the results of the research discussion, it can be concluded that the Malays uphold the rules and laws of Islamic sharia in marriage. In this study, there are two versions of customary sanctions adopted by the Malay community. The customary sanction applied in Kuantan Singingi Regency, Kuantan Hilir Seberang District, regarding the annulment of marriage is the agreement of both parties to provide a number of materials to one of the aggrieved parties so that there is no misunderstanding. This sanction is carried out in order to have a deterrent effect on the party who breaks the promise or cancels the marriage.

Keywords: *Customary Sanctions, Annulment of Marriage, Malay Society.*

1. INTRODUCTION

Marriage is a religious commandment for all humanity. In Islamic teachings, marriage contains the value of legal certainty which means that marriage must be carried out by fulfilling certain requirements, both those concerning both parties and those related to the implementation of the marriage itself (Fahmi, 2019). Through marriage man expects to get good offspring so that he can pass on the lineage of his parents.

The definition of marriage is regulated in Law No.1 of 1974 concerning Marriage which reads, marriage is an inner birth bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the One True Godhead.

A Van Gennep posits that marriage as a *rites de passage* (transitional ceremony) transitions the status of the bride and groom; from living apart, having transcended the ceremonies, to cohabiting in a life as husband and wife. *Rites de Passage* according to A. Van Gennep consists of three levels, namely *Rites de Separation*, namely the ceremony of separation from the original status, *Rites de Marge*, which is the ceremony of traveling to a new status, and *Rites d'aggregation*, which is an acceptance ceremony in a new status (Zulkarnain, 2015).

Soerojo Wignjodipoero, revealed that the marriage not only concerns the wedding couple, but also the parents of both parties, their siblings, their families, and even the spirits of their respective ancestors (Fahmi, 2019). Each marriage is performed according to their respective beliefs or beliefs accompanied by traditional ceremonies. A traditional ceremony is a series of actions or deeds that are bound to certain rules based on customs, religion, and beliefs (Zulkarnain,

2015). Traditional ceremonies found in an area are carried out for generations so that they have different characteristics in each region.

The traditional procession of marriage among ethnic Malays is one of the elements of the realization form of heightening the degree of women, in accordance with the lawsuits that apply in the Islamic religion (Saragih, 2018). The betrothal (*peminangan*) is conducted before the traditional marriage ceremony is conducted. Betrothal is commonly called an engagement or application process carried out by the male party to the female side. Betrothal or *peminangan* is an effort to bring together a man and a woman and with the consent of both parties where they promise to hold a certain marriage (Saragih, 2018).

Betrothal is not a necessity or a series of customs that must be fulfilled, but this procession has become a habit that has been carried out by previous communities for generations. The implementation of a request or engagement in practice there are no specific rules governing infidelity. However, there are several things that are usually done, including conveying direct loans, requesting by messengers, requesting with innuendo at the time of *iddah* death, saying in the request and seeing the woman being smitten. Direct delivery is the most conventional and most widely known method in society, namely by propose single women through the female guardian (Iqbal, 2020).

At the betrothal, usually both parties discuss the dowry, the wedding day, the cost of the marriage and make an agreement regarding the fine for violations if the request is canceled by one of the parties. The distance between the period of betrothal or engagement with marriage is usually weekly, monthly, or yearly, but according to the beliefs of previous parents the shorter the distance between the two, the better. Post-betrothal problems are generally diverse, ranging from small to fatal, namely unilateral annulment of marriages.

Based on this, this research is important to do in order to find out the customary law of the Malay community that applies if one of the bride and groom's party cancels the betrothal agreement and how the law is carried out.

In the book *Social Interpretation of Reality*, Berger and Luckman assert that religion as part of culture is a human construct, this means, that there is a dialectic process between society and being in texts and norms. The text or norm undergoes a process of internalization into the individual because it has been interpreted by humans into a guidance or way of life (Fahmi, 2019). Religion also undergoes a process of externalization because religion becomes something shared in society

Meanwhile, law is not sufficiently understood by highlighting ideal rules that are considered a reflection of the law. Law as a human regulator in living a social and state life. According to Tolib Setiady, customary violation laws are customary law rules that drive events or actions that result in disruption of community balance so that they need to be resolved (punished) so that the balance of society is not disturbed (Fahmi, 2019).

According to Soepomo (1893: 20) some areas of the customary law environment in Indonesia have types of customary reactions (customary corrections/customary sanctions) to violations of customary law, for example:

1. Substitutes for immaterial losses in some form such as the compulsion to marry a defiled girl.
2. The payment of customary money to the affected, which is in the form of a magic object in lieu of spiritual loss.



3. Cover embarrassment, apology.
4. Various corporal punishments to the death penalty.
5. Exile from society as well as putting the person outside the legal system.

According to Fahmi, customary law is a law that becomes a habit of society that becomes daily behavior between one another and there are sanctions in it usually in the form of morals (2019: 29)

2. IMPLEMENTATION METHOD

This study uses Schleiermacher's romantic hermeneutics, which is a text analysis approach. The main purpose of hermeneutics is to unearth meanings that are hidden beyond the limitations of the text. Hermeneutics, according to Schleiermacher, is the art of understanding. Schleiermacher believes that hermeneutics is the art of understanding the thoughts or intentions of others in oral or written form (Fatah, 2017).

Schleiermacher views that an interpretation requires an intuitive understanding of the text its purpose is to imaginatively reconstruct the environmental situation and inner state of the author so that the text is not too unfamiliar with the interpreter (Fatah, 2017). Schleiermacher's hermeneutics offers two interpretations, namely grammatical interpretation and psychological interpretation. Grammatical interpretation, that is, conducting an analysis of the structure of sentences and language. While psychological interpretation, that is, the process of text analysis by knowing the psychological author or author (Hamdan, 2020). The psychological (psychiatric) aspect was felt to be important to Schleiermacher, since the text is an expression of a person who is a response to what he has or is facing. That is, the text has a relationship with what is around it, which affects the psyche of a person in expressing his heart (Surawidjaja, 2019: 51).

This research is also included in the qualitative method which is descriptive analysis because the data collection process in addition to using literature study techniques also uses observation and interview techniques. The place where this research is carried out is Pekanbaru City within 3 months of implementation, starting from October to December 2022.

3. RESULTS AND DISCUSSION

In Malay marriage custom, a series of ceremonies are carried out in detail and neatly arranged, all of which are carried out by the bride-to-be couple and their families. Pekanbaru Malay society upholds the rules and laws of Islamic sharia in marriage. In the Islamic view, marriage is worship and also the sunnah of the apostle or a tradition that has been established by the apostle for himself and his people.

According to Fahmi (2019: 203-204) in the marriage procedures of the Palembang people refer to the principles of marriage law according to the Islamic religion which include:

1. Willingness, approval, and choice.

A person cannot be forced to do or not exercise his right if the act does not contradict the provisions relating to his right. Marriage can only be performed after obtaining the consent and willingness of the person who has the right.

2. Conjugal position

Religion stipulates that the husband is responsible for taking care of his wife's life, because the husband pledges a degree higher than his wife. This designation does not

mean that men are more powerful than women but only shows that men are the leaders of the household.

3. For all eternity

One of the purposes of marriage is to continue the good offspring need to be educated in the circumstances of the father and mother in one marital bond.

3.1 Annulment of Marriage

Annulment of a marriage can occur and is caused due to either party or the agreement of both. Saragih revealed that there are several factors that cause the cancellation of marriage in Malay society including, factors of the presence of a third person, educational factors, economic factors, factors of obedience to parents, and factors of death (2018: 45-49).

Shaikh Nada Abu Ahmad said if a woman's guardian sees a benefit in the cancellation of the request, then she is allowed to withdraw the promise to marry her child. Even the woman herself also has the right to cancel the loan if she doesn't like the host. Marriage is a lifelong bond, therefore the woman who is going to get married must be careful in determining her own luck, including in terms of choosing a partner that suits her (Iqbal, 2020).

In this study, the customary sanction applied in Kuantan Singingi Regency, Kuantan Hilir Seberang District, regarding the annulment of marriage, was the agreement of both parties to provide a number of materials to one of the aggrieved parties so that there would be no misunderstanding in the future if there was a cancellation of the marriage.

Based on Hasanuddin's narrative (interview, April 18) the problem experienced by the bride and groom is that there is a sudden annulment of marriage by men without concrete reasons but they are willing to pay fines or sanctions. In this case, the law that is violated is customary law, since in the Islamic view there is nothing in the Quran and the propositions governing void marriages.

3.2 Forms of Customary Sanctions in the Annulment of Malay Marriages

The customary law that applies to the Malay community is a hereditary law. In the past, the form of legal sanctions was that if the annulment of the marriage was carried out by the male side, then all the goods that had been given to the female party at the time of the proposal would be forfeited or become the property of the female party. But if the cancellation is made by the female side, then the female party must return the dowry twice as much as the dowry that has been given.

But over time, the practice of customary law has changed. Currently, if there is a cancellation of the marriage carried out by the female side, the female party is obliged to return the dowry with the same amount. However, there are still some families still using the old law, which is to pay double the dowry.

This sanction is carried out in order to have a deterrent effect on the party who breaks the promise or cancels the marriage. In addition to legal sanctions, social sanctions are also obtained by the party who cancels them. Social sanctions are in the form of exile or usually they will leave their yard camp in shame. According to Isaac (interview 2022), if one of the parties is unable to carry out these customary sanctions, of course he will feel ashamed and leave the camp. Because marriage is something sacred, the annulment of the marriage by one of the parties becomes a very serious problem.



4. CONCLUSION

Based on the results of the research discussion, it can be concluded that the Malays uphold the rules and laws of Islamic sharia in marriage. In this study, there are two versions of customary sanctions adopted by the Malay community. The customary sanction applied in Kuantan Singingi Regency, Kuantan Hilir Seberang District, regarding the annulment of marriage is the agreement of both parties to provide a number of materials to one of the aggrieved parties so that there is no misunderstanding. This sanction is carried out in order to have a deterrent effect on the party who breaks the promise or cancels the marriage.

REFERENCES

- Fahmi, Ahmad. (2019). Construction of Customary Law of Marriage of Palembang Malay Community Based on Islamic Shari'a. Dissertation of Raden Fatah State Islamic University Palembang <http://repository.radenfatah.ac.id/11994/1/Disertasi%20Lengkap.pdf> .
- Fatah, Abdul. (2017). "The Blessing of Al-Aqsha Scheleiermacher's Hermeneutic Perspective". Journal of Ma'had Research UIN Walisongo Vol.14 No.1, <https://doi.org/10.28918/jupe.v14i1.1205>.
- Hamdan, Muhammad. (2020). "Infidel Philosophy in the Qur'an: A Hermeneutic Analysis of Schleiermacher". Tashwirul Afkar Journal Vol. 38, No.2, <http://tashwirulafkar.net/index.php/afkar/article/view/25/10>
- Iqbal, Nur Haq. (2020). Review of Islamic Law Against *Didosa'* Due to the Unilateral Cancellation of Male Opposition in the Ba'tan Indigenous Peoples. Iain Palopo State Islamic Institute thesis <http://repository.iainpalopo.ac.id/id/eprint/2708/1/NURUL%20HAQ%20IQBAL.pdf>.
- Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage Article 1. Tahkim. Vol. VI Number 2 December 2016.
- P.L. Berger and Luckman. (1990). Social Interpretation of Reality, A Treatise on the Sociology of Knowledge. Jakarta: LP3ES.
- Saragih, Azzura Pattern. (2018). Cancellation of Marriage by Prospective Husband or Wife Based on Malay Customary Law. Thesis of Muhammadiyah University of North Sumatra Medan <http://repository.umsu.ac.id/bitstream/handle/123456789/10413/SKRIPSI%20POLA%20AZZURA%20SARAGIH.pdf?sequence=1&isAllowed=y> .
- Surawidjaja, Djoko. (2019). Safety For The Rich Schleiermacher's Hermeneutic Analysis Of Quis Dives Salvetur. Thesis of Sanata Dharma University Yogyakarta, <https://repository.usd.ac.id/42224/> .
- Soepomo. (1982). Chapters on Customary Law. Jakarta: Pradnya Paramita.
- Zulkarnain, Ilham. (2015). Implementation of Traditional Marriage Ceremony of Malay Community at Keraton Surya Negara Kelurahan Ilir Kota Kecamatan Kapuas Kabupaten Sanggau. Tanjungpura University Thesis 2015 <https://jurnal.untan.ac.id/index.php/jmfh/article/view/11413> .

Source Person :

Hasanuudin Umar

Muhammad Ishak