Negotiated Order in Mut'ah Marriage

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ABSTRACT. Marriage, as defined by Law No.1/1974, is an inner and outer relationship between a man and a woman with the goal of building a joyful and eternal family (home) based on the One Godhead. However, there are various social phenomena that occur in the society with specific goals that are structured in a marriage process known as mut'ah marriage or contract marriage. In this study, the author attempts to evaluate mut'ah marriage from a sociological standpoint using a social definition paradigm and the perspective of symbolic interactionism, specifically negotiated orders. This research is a library research. As a result, actors face a variety of incentives ranging from the economic to the social which can then cause damage at the stage of the basis of action to the stage of consumption or action. Two forms of negotiation were also found to justify mut'ah marriage, namely the negotiation of the rational dimension and the negotiation of the economic dimension

KEYWORDS: mut'ah marriage, negotiated order, symbolic interactionism, marriage.

INTRODUCTION

Marriage is a way to open the door of sustenance, because in marriage there is the glory of getting offspring and opening the cord of friendship between the two families so that it can open many doors of help. In addition to opening the door of sustenance, marriage is an institution that can create social order and can become the foundation of social life. With the institution of marriage, basic human needs both physically and mentally can be fulfilled.

Marriage in Islam is the only relationship between a man and a woman that is justified, resulting in a harmony known as family. Such sharia can eliminate the anxiety of men and women to avoid adultery, and turn it into a peace in fostering domestic dynamics. The definition of marriage in positive law has been regulated in Law No.1/1974 concerning Marriage, namely that 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 (household) based on God. The Almighty[1]".

In addition to the definition provided by Law no. 1 of 1974, the Compilation of Islamic Law in Indonesia also provides another definition that does not reduce some of the meaning of the definition of the law but is to add to the explanation with the formulation of article 2 chapter II of the KHI, namely "Marriage according to Islamic law is marriage, namely a very strong contract or mîtsâqan ghalîzhan to obey Allah's commands. and doing it is worship."[2]

But on the other hand, marriage institutions are defined in various ways by some people. One of the social phenomena that occurs in society is the existence of temporary or temporary marriages. Such marriages are popularly referred to as contract marriages or mut'ah marriages. Mut'ah comes from the word mata'a yamta'u mat'an, which means enjoyment or pleasure, which is something that is enjoyed or given to be enjoyed. Mutah marriage is also called temporary marriage (mu'aqqat) or interrupted marriage (munqati') which is a marriage contract that is limited to a certain time, because the man who marries the woman is only one day, or one week or one month and so on. [3]The practice of mutah

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[1] Direktorat Jenderal Bimbingan Masyarakat Islam dan Penyelen - garaan Haji, Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan dan Peraturan Pemerintah Nomor 9 Tahun 1975 serta Kompilasi Hukum Islam di Indonesia, (Jakarta: Departemen Agama RI, 2004), h. 14.

[2] *Ibid*. hal. 128

[3] Haris Hidayatullah, Pro-kontra Nikah Mutah dalam Perspektif Maqasid Al-shari'ah, Jurnal Studi Islam Religi, Vol 5, No 1 (2014).

marriage is very popular in Iran, a well-known country with Shias. Meanwhile in Indonesia, in the village of North Tugu, Cisarua District, Bogor, it is often the case for contract marriage actors.

In Iran, After 15 years of war, an estimated one million Iraqi women are widowed and many others displaced so that many Iraqi women and girls are compelled to accept contract marriage schemes because of poverty[4]. An investigation conducted by the BBC found that a 13-year-old woman in Iran agreed to accept a contract proposal for 150,000 dinars or around Rp. 1,477,000 per day, while the dealer, who is usually a Shia cleric, earns around $200 or around Rp. 2,800,000.

The practice of mut'ah marriage also occurs in Indonesia, in an event on a private television broadcast of interviews with several women who did mut'ah marriages in Cisarua. One of them, a young woman who is 22 years old, innocently mentions that she has performed 8 mut'ah marriages, the longest being one month and the shortest being four days. And the four days paid two million rupiah. When asked about his feelings and reasons, he simply answered that it was normal because it was a job to earn easy money and the relationship was carried out through the marriage process.

From the social phenomena above, the symbolic interactionism conveyed by George Hebert Mead can be the knife of his analysis. Mead said that social groups are the cause of individual mindsets. More clearly, Mead explains that thinking and self-aware individuals are logically impossible, without the existence of a social group. Likewise with the mindset of mutah marriage that occurs in Iran and Indonesia. The community environment that supports individuals to perform mutah marriages is quite strong, so that it affects the mindset of individuals even with various consequences[5].

The phenomenon of mutah marriage is also strengthened by the negotiation process in social groups. How not, the concept of a marriage that should be sacred can be communicated by way of negotiation. Anselm Leonard Strauss, a sociologist who also focuses on symbolic interactionism, said that negotiation has a very broad and inclusive meaning, involving all kinds of reaching agreements such as bargaining, compromise, making arrangements, gaining understanding, exchange, engaging in collusion and so on. Strauss added that the negotiation of things that have been ordered is called a negotiated order.

In this paper, the author tries to analyze mutah marriage from a sociological point of view with a social definition paradigm through the perspective of symbolic interactionism, especially negotiated orders.

THEORETICAL BASIS

1. **Mut'ah Marriage**

    According to Sunni scholars such as Sayyid Sabiq[6], he stated that mutah marriage is also called temporary marriage or interrupted marriage, because a man marries a woman only for a day or a week or a month. It is called a mutah marriage because the man intends to have fun for a while. Meanwhile, according to scholars from Shia circles such as Muhammad Husayn Fadlullah, he interpreted mutah marriage as a temporary husband-wife relationship which was held through a certain contract which stated in it the period (marriage limit) and dowry in addition to the subject of the marriage itself[7].

    Mutah marriage is a form of forbidden marriage that is woven in a short time to get a set gain. It was allowed in the early days of the formation of Islamic teachings, before Islamic law was fully established. It was allowed in the early days when one was on a journey or when people were fighting against the enemy. Mutah marriage has become a habit in Arab society in the Jahiliyah era to marry a woman for a short time, only for a while. It is a disgrace to act against women, made by men to be their tools in a short time. A merchant, for example, or an officer moves from one city to another. In every city he stopped, he married a woman, later after finishing his business in that city, he divorced the woman and he went to the next city, married a woman in that city too, who later

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[4] https://www.bbc.com/indonesia/dunia-49929433 , 4 Oktober 2019

[5] Isnawati Rais, *Praktek Kawin Mut'ah di Indonesia dalam Tinjauan Hukum Islam dan Undang-undang Perkawinan*, Jurnal Ilmu Syariah Ahkam, Vol 17, No 1 (2014).

[6] Haris Hidayatullah, *Op. Cit.*

[7] *Ibid.*

after his work was finished he would also divorce. That's how it goes. At first Islam allowed this, but later it was forbidden to do so.

Muth'ah marriage was allowed by the Messenger of Allah before the stability of Islamic law, that is, it was permissible during travel and war. But then it was forbidden. The secret of being allowed to marry muth'ah at that time was because the Islamic community at that time was still in transition (a period of transition from ignorance to Islam). Adultery during the jahiliyah period was a common thing. So after Islam came and called on his followers to go to war. Because they are far from their wives is a great suffering. Some of them have strong faith and some are not strong in faith. For those whose faith is weak, it will be easy to commit adultery which is a vile and forbidden act. And for those whose faith is strong, they desire to castrate and impot their genitals[8].

2. **Symbolic Interaction George Hebert Mead**

Mead is one of the thinkers of Symbolic Interactionism, in his book Mind, Self, and Society explains this tradition clearly. Mead's emphasis in this tradition is not on the later thinking of society but its opposite. The community is the first and then the thoughts that arise in the community. Mead views action as a "primitive unit". Mead argues that "we think of stimulus as an opportunity or opportunity to act, not as coercion or command. Mead identified four interrelated bases and stages of action. The four actions are interconnected and form an organic unity. Mead was interested in the similarities and differences between humans and animals especially in the actions of the two creatures[9].

Impulse, the first stage is an impulse or impulse which includes stimulation / spontaneous stimulation related to the senses and the actor's reaction to the stimulus, the need to do something about the stimulus. In thinking about reactions, humans consider not only the present situation, but also past experiences and anticipate the consequences of future actions.

Perception, in this second stage, the actor investigates and reacts to stimuli associated with impulses. Perception involves both incoming stimuli and generated mental images. Actors do not directly or spontaneously respond to external stimuli, but think about it for a while and judge it through mental images.

Manipulation, as soon as the impulse expresses itself and the object has been understood, the next step is to manipulate the object or take action with respect to that object. Giving pause by treating objects, allows humans to reflect on various kinds of responses.

Consumption, this stage is action, namely the stage of implementation or consumption, or taking action that satisfies the real impulse. Humans have the ability to manipulate and think about their effects. So according to Mead, trial and error is unlikely to occur in humans.

To facilitate discussion, the four stages of action have been separated from each other in sequence, but in reality Mead sees a dialectical relationship between these four stages. "Although the four stages of action sometimes appear to be sequential in a straight line, in fact they are mutually destructive to each other to form an organic process.

3. *Negotiated Order* **Anselm Straus**

Strauss, full name Anselm Leonard Strauss, was an American sociologist (December 18, 1961 – September 5, 1996) who had an influence on symbolic interactionism between the 1940-1990s. Masters and Doctoral degrees in sociology at Chicago University with Becker and Goffman. Strauss became a central figure in the theory of negotiation, related to his works which discussed many of the negotiations and the negotiated order (negotiated order)[10].

Negotiation according to Strauss (1965) has several meanings. Negotiation with is defined as '…the process of give and take, of diplomacy, of bargaining – which characterizes organizational life' (Strauss et al 1965:148). (the process of giving and taking, diplomacy, bargaining that

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[8] *Ibid.*
[9] George Ritzer-Douglas J. Goodman. Teori Sosiologi Modern, hal 273-275.
[10] Sugeng Pujileksono, Sosilogi Penjara. Intrans, Malang, 2017. Hal 176.

characterizes organizational life). For Strauss, the terms involve: (1) interaction or communication, (2) in which an agreement is reached, (3) and as a result each agent is subject to change, and may also have to adapt and internally re-integrate with the agreement.

Anslem Strauss (1978), argues that rather than using organizational structure as a clear and permanently binding ground rule, it is important to understand the dynamics in which structures are developed and shaped through "testing" the actions and feedback of others. The concept of negotiated order is rooted in Strauss' version of symbolic interactionism which emphasizes the role of relations between actors in defining a particular situation or context.

The term negotiation by Strauss has a very broad and inclusive meaning, involving all types of reaching agreements such as bargaining, compromise, making arrangements, gaining understanding, exchange, engaging in collusion and so on. Negotiation as a sociological concept has many meanings.

Broadly speaking, negotiation is a way for two or more parties with different interests, whether in the form of opinions, stances, intentions, or goals, in seeking an understanding by bringing together offers and requests from each party so that an agreement or understanding can be reached which can be in the form of an opinion, stance, intent, or purpose.

Negotiated order is a theory developed mostly in symbolic interactionism to describe people negotiating with one another in social organizations. This concept was designed as part of a response to the criticism that interactionism is considered to have no tools for analyzing social structures and is too subjective. This theory is an attempt to describe social organizations in which there are social actors who are active in achieving consensus. Negotiated order is not a static, abstract concept. This can be traced back to a number of classic sources, such as Mead's concept of dialectic society, Blumer's ideas about processes of interpretation and collective action, Park's characterization of society as a succession of conflict, accommodation, and amalgamation, and Everett Hughes' concern with institutional flexibility[11].

DISCUSSION

1. Actors and Social Interactions

Broadly speaking, Mead's thinking leads to chord thoughts and actions that are influenced by social interaction. Mead identified four interrelated bases and stages of action, namely impulse, perception, manipulation and consumption. In the phenomenon of mutah marriage, the actors have various kinds of encouragement. One of the impetus for male actors to perform mutah marriage is of course the sexual drive. For those who have sufficient funds to propose to the woman, they simply convey it to the intermediary, what is the nominal amount and how long the marriage will be. Likewise, female actors will accept proposals by looking at the nominal they will receive. The economic dimension is a strong impetus for why female actors accept mut'ah marriages. Many Iraqi women and girls are compelled to accept contract marriage schemes because of poverty[12]. On the same level as what happened in Iraq, in Tugu Utara Village, Cisarua, Bogor, there are at least 3 incentives for the actors to do mut'ah marriage, namely the need for biological factors, environmental factors, and economic needs[13].

However, the economic dimension is not only the impetus for doing mut'ah marriages. There is also encouragement from the women's side, namely that there are still some Shia ethnicities in Iraq that undergoing mut'ah marriage is the reason for wanting to get offspring from the side of a man who is respected in the local community. High social status in terms of wealth and position, especially 'permissibility' in the science of religion[14]. After getting encouragement, the actor enters the second stage, namely perception. At this stage the actor conducts an investigation of the impulse or impulse. Actors do not directly respond to impulses, but think through mental

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[11] Ibid. Hal 179.
[12] https://www.bbc.com/indonesia/dunia-49929433 , 4 Oktober 2019, *Op. Cit*.
[13] Surahman. Praktek Pelaksanaan Nikah Mutah di Desa Tugu Utara, kecamatan Cisarua Bogor. Skripsi UIN Syarif Hidayatullah, 2017. Hal 51.
[14] https://jatim.antaranews.com/berita/206256/di-negeri-1001-malam-nikah-siri-dan-mut-ah-beda-tipis, Jumat, 29 September 2017

images. However, at this stage, in the context of mutah marriage, both in the Middle East and Indonesia, it seems that this does not apply if the economic dimension is still a strong reason for the occurrence of mutah marriage. Economic pressure allows actors to respond directly to existing impulses, even directly to consumption or action without going through the stage of manipulation.

The breakdown of the stages of action in the context of mutah marriage above, has been predicted by Mead. "Although the four stages of action sometimes appear to be sequential in a straight line, in fact they are mutually destructive to form an organic process."

2. *Negotiated Order* in Nikah Mut'ah

For groups that support mut'ah marriage, this concept is a smart solution to become a solution to the trend of promiscuity. In summary, people who are pro mut'ah have the following arguments[15]:

a. Nikah mut'ah prevent and reduce adultery. It is not always possible to marry a daim for every young man. If mut'ah marriage is not legalized by law, then promiscuity between men and women will be more rampant, along with that adultery will certainly be widespread.

b. Nikah mut'ah a level better when compared to promiscuity. Because mut'ah marriage has clear rules and binding agreements, while promiscuity does not have binding rules and agreements, so it will have negative psychological and biological impacts.

c. Children resulting from mut'ah marriages have the same rights as children from permanent marriages (dâim). Children resulting from mut'ah marriages can legally be assigned to both their father and mother, while illegitimate children from extramarital relationships due to promiscuity cannot be assigned to one or both parents. Children from mut'ah marriages get the same rights (rights of protection, education, maintenance, inheritance, etc.) Both parents in a mut'ah marriage are responsible for educating and caring for the child, while the child as a result of promiscuity (relationship outside marriage) his parents are not obliged to educate and care for the child. And of course, illegitimate children tend to have lower social status and are despised by society.

d. Mut'ah marriages is the best way to vent sexual desire for people who are not able to bear the responsibilities of a dâim marriage. Dâim marriage is accompanied by burdens and responsibilities that are not light (financial and moral), so that not everyone is able to carry it out. When a person's biological clock has started to sound, then a mut'ah marriage can be a better alternative than going into prostitution.

e. Mut'ah marriage can be used as a training ground or trial and error to build a complete household before the dâim's marriage. The occurrence of many divorces, lately, may be due to a lack of experience in building a household. If the mut'ah marriage is legalized by law, then the problem of the number of divorces can be overcome. Gradually, after mut'ah is accepted by the community, society will be directed to a serious marriage, namely dâim marriage.

f. To avoid adultery and pregnancy during the fiancé. Engaged men and women usually get closer to each other or get closer. They want to be more intimate and start being tempted to have sex. Therefore, if mut'ah marriage is legalized, then adultery during this vulnerable period will not occur.

The opinion of the pro-mutah marriage group above is part of the negotiation. They try to explain rationally why mutah marriage can be done. From the start, avoiding adultery, binding agreements, rights to children, as a solution to biological times, household training, to eliminating vulnerable moments after the engagement. However, if we return to the impulses of the actors who perform mutah marriages which give room for the economic dimension, the rationality of the mutah marriages above will no longer have any meaning. Even as if mutah marriage is another face of prostitution. This is exacerbated by the involvement of religious symbols, such as Shia clerics who

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[15] Sukron Makmu. Fenomena Pernikahan Mutah di Republic Islam Iran (Antara Ada dan Tiada). Jurnal kajian Gender Muwazah. VOL 1 NO 2 (2009).

mediate between male actors and female actors who will carry out mutah marriages. As reported by the BBC[16].

> "A married man who routinely uses the contract marriage scheme to have sex with the women offered by the cleric told the BBC that, "A 12 year old girl is very valuable because she is still 'fresh'. It will cost a fortune - US$500 (Rp 7 million) , US$700 (Rp 9.8 million), US$ 800 (Rp 11.2 million) - and that's all that only ulama can get."

The man believes that he has religious reasons for behaving this way, adding that if a cleric says that mutah marriage is lawful, then there is no sin for him. From the explanation above, a common thread can be drawn that there are two forms of negotiation to justify mutah marriage, namely the negotiation of the rational dimension and the negotiation of the economic dimension. Returning to Strauss, according to him, negotiations have some meaning. Negotiation with a process of give and take, diplomacy, and bargaining.

Negotiation of the rational dimension of mutah marriage can be said as a type of bargaining negotiation. For groups who are against mutah marriage, the rationality of human biological time makes a lot of sense. As humans, biological time becomes a basic need that cannot be avoided, so mutah marriage becomes a logical thing to accept. However, the reason for mutah marriage for practice or trial and error is something that is less logical for the contra group. For the contra-marriage group, it is not a place for trial and error, marriage is a very sacred institution and its dignity is highly respected.

The negotiation of the economic dimension is a negotiation of give and take (take and give). One of the basic human needs is material needs. Conditions in the Middle East, especially Iraq and Iran, which are full of prolonged Shia and Sunni conflicts, have caused the country's economy to crumble. An instant way to get material is one of them with mutah marriage. This is also supported by religious symbols that provide access to transactional mutah marriages so that they become a consensus for the group.

CONCLUSION

Marriage according to Law No.1/1974 concerning 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 (household) based on the One Godhead". Likewise in Islamic law which states that marriage is a very strong contract or mîtsâqan ghalîzhan to obey Allah's commands. and doing it is worship.

In the phenomenon of mutah marriage, the actors have various kinds of encouragement. The economic dimension is a strong impetus for actors to carry out mutah marriages. The impetus by the economic dimension destroys the basic stages of action presented by Mead. After actors get an economic boost, they do not need to enter the stage of perception and manipulation, they go directly to the stage of consumption or action.

There are two forms of negotiation to justify mutah marriage, namely the negotiation of the rational dimension and the negotiation of the economic dimension. The negotiation of the rational dimension of mutah marriage can be said as a type of bargaining negotiation, while the negotiation of the economic dimension is a take and give negotiation.

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[16] https://www.bbc.com/indonesia/dunia-49929433, *Op. Cit.*

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