Legal Analysis of Sibling Forbidden Relationships (Incest)

Andi Kasmawati 1*, Bakhtiar 2
1 Citizenship Education, Universitas Negeri Makassar
2 Citizenship Education, Universitas Negeri Makassar

Abstract. This research is qualitative, and the type of data source is secondary data, so the data collection technique used in this research is documentation. The analysis was carried out using content analysis data analysis. From this research, it was found that the law that regulates marriage Undang-Undang Nomor 1 Tahun 1974 tentang perkawinan sebagaimana telah diganti dengan Undang-Undang Nomor 16 Tahun 2019. In addition, marriage is also described in Kompilasi Hukum Islam Law article 39-point (1) letter a. In addition, civil law also regulates the prohibition of marriage which is explained in Article 30 of KUH. Thus, both in religious law and state law, inbreeding does not provide space at all. According to Islamic law, incest is strictly prohibited or forbidden in the religion as stated in the QS. An-Nisa: 22, 23 who should not and may not marry. By customary law, it is strictly forbidden to have incest because it violates the norms and values that apply in society.

Keywords: Sibling’s illicit relationship, a legal analysis, law

1 Introduction

The law was formed to regulate human life, organize, allow, and prohibit doing something that is considered not by the principles of justice and the benefit of mankind, for the fulfillment of rights and the implementation of obligations, for a person.

Sources of law that apply in our country are still diverse, in addition to formal legal sources in the form of written laws and regulations, customary law and customs are still adhered to by the community, including arrangements for family relations, marital problems, and inheritance.

The Indonesian people, including people who are rich in customs and culture, continue to grow and remain sustainable, armed with the law, culture, and religion, then any violation or action that violates the law and cultural customs will be subject to sanctions. Regarding illicit relationships, including relationships of the other sex, marital relations with siblings (Incest), and others, in any existing rules, whether law, custom, or religion, nothing is allowed.

The creation of a woman and a man is a nature given by God to love and love each other in a legal bond, namely marriage. Marriage is a contract or agreement to bind a man and a woman to justify sexual relations between the two parties to create a family life filled with love and peace in ways that are blessed by God Almighty. Soemiyati [1]. In addition, marriage aims to produce offspring.

Marriage is a sacred thing for God's creatures who want to continue their offspring and obtain a happy household, becoming the dream and hope of every human being. Happiness that would make a harmonious household. Of course, in a marital relationship, certain rules and conditions must be met both in terms of private law and public law as well as Islamic law. Marriage becomes invalid if it violates several provisions in the law whether it is legal or not according to the state or according to religious provisions.

In Indonesia, the law that regulates marital problems is Law no. 16 of 2019, in lieu of Law Number 1 of 1974 concerning marriage. On the other hand, the law governing marriage is also explained in the KHI (Compilation of Islamic Law) article 39 point (1) letter(a) which states that it is prohibited to marry "with a woman who gives birth or gives birth to her or her offspring"[2]. In addition, civil law also regulates the prohibition of marriage which is explained in article 30 of the KUH Perdata "Marriage is prohibited between those who have blood relations with each other in an upward or downward line, either because of a legal birth or because of illegitimate birth, or because of sideways marriage, between brothers and sisters, legal or illegitimate" [3].

Thus, both religious law and state law of incest (Incest) do not give space at all. Therefore, the role of parents, educators, religious leaders, and all elements of society are responsible for the moral decadence that occurs in society.

* Corresponding author : andi.kasmawati@unm.ac.id.
From the background described above, the researcher is interested in researching. As a form of effort to prove to the public that these deviant acts cannot be allowed to continue. Therefore, research is hoped that this information will provide information about Legal arrangements for illicit relations between siblings (Incest). Factors that influence the occurrence of illicit sibling relationships (Incest). Efforts are made to prevent cases of illicit relations between siblings (Incest).

2 Research Method

This research is qualitative research, according to Djuniadi & Almanshur [4], qualitative research is research that produces findings that cannot be achieved using statistical procedures or by means of quantification.

The method of collecting, processing, and analyzing data source data in this study is secondary data, which is data obtained by researchers from sources that already exist in the literature. This data is in the form of documents, laws, and regulations, references/books, journals, and other supporting documents.

Data was collected using documentation techniques, namely data collection using documents and references related to the object of research by recording and analyzing the material systematically.

Data obtained from data in the form of secondary data will be processed and analyzed based on the formulation of the problem that has been determined so that a clear picture can be obtained. The data analysis used is data analysis in the form of a clear and concrete description of the object discussed qualitatively.

3 Results and Discussion

MSMEs empowerment is not only the responsibility of the legal arrangement for marital relations outside of the marriage of Incest's siblings is included in a crime or sexual abuse, where the abuse carried out can be in the form of physical or non-physical abuse. Therefore, it is necessary to have clear legal arrangements regarding incest or incest. As can be seen, the description is as follows:

3.1 Criminal Law Arrangements

In the Criminal Code, it views sexual relations outside of marriage, which are carried out by people who are in the status of husband and wife, which are considered as adultery, and what is considered adultery in criminal law is when a man and a woman commit an act of adultery. This is carried out by one of the parties. The criminal threat of adultery only applies to women or men who are married or bound in marriage. This means that the criminal law does not consider adultery when the perpetrators are men and women who are both unmarried. In this case, criminal law views that adultery based on consensual consent does not harm any party so the perpetrator does not need to be punished.

In criminal law, there is no article that regulates incest or incest which is declared a violation and can be processed by the police in the event of an adultery case in which one party feels aggrieved.

In the event of an incest or incest marriage, from the point of view of marriage law, if there really is an official marriage, then later it is found out that it is an incestuous marriage, moreover, it is a second marriage without the permission of the wife or husband as required, then the marriage can be annulled.

From the point of view of criminal law, there are several possibilities that cause the marriage to take place, including There is the falsification of marriage documents (falsifying the identity of the prospective bride and groom) and the Marriage Registrar Officer from the Office of Religious Affairs thinks it is true so they are married. Making a written statement that is not true (a fake letter or a letter whose contents are not proper or not true is a crime as regulated in Article 263 of the KUHP [5]. If the married person is already bound by a previous marriage (having a wife/husband), then the second marriage does not meet the requirements of Article 9 of the UU. No. 1 tahun 1974sebagaimana telah diganti dengan Undang-Undang No. 16 Tahun 2019 tentang Perkawinan [6], and can also be charged with Article 279 of the KUHP [5] because previous marriages were a barrier.

If there is a marriage or a husband and wife relationship that is carried out outside of marriage and one of the parties has a wife or a husband, it means that they have committed a crime of adultery and can be subject to criminal penalties (Article 284 of the KUHP), cumulative punishment which is subject to the concursus punishment system.

Criminal law does not regulate incest or incest-based on mutual consent, unless this incest is carried out at the coercion of one party, the criminal penalty can apply to a case of rape.

3.2 Islamic Law Regulation

In addition to criminal law, there are several perspectives of Islamic law and customary law in looking at this case of incest or incest. According to the Islamic point of view, incest is a physical and spiritual bond between a man and a woman who is in a forbidden relationship. Islamic law has rules and conditions for marriage, there are prohibitions that must be avoided so that marriage is legal and lawful in Islam.

"According to Islamic law, incest is strictly prohibited or forbidden in the religion as stated in the QS. An-Nisa: 22, 23 Who should not and may not marry [7]. So we from KUA cannot marry those two people who have incest or incest. We also cannot apply or impose sanctions or penalties on these two people under Islamic law because the country does not follow an Islamic legal system. If in Islamic law if there is incest or incest then both of them deserve to receive punishments such as the punishment of someone who commits adultery but this applies only in countries that apply Islamic law as the legal basis. Cases of incest or incest under state law and Islamic law are invalid because they have violated the provisions of the QS. An-
The marriage law does not include criminal sanctions. The consequences of things that are prohibited in the marriage law are administrative in nature, the sanction for inbreeding is the annulment of marriage. However, if in the process of incest or incest, it is proven that they have intentionally falsified documents and witnesses, then the act can be brought to the realm of crime.

“In Islamic law, if there is a case of incest or incest, then the stoning law applies because this act is strictly prohibited and cannot be done in Islam. This means that the law of stoning is technical and must be done. In Islamic law, if the perpetrator of this blood relationship has been married. The law of stoning is to plant his body up to his neck and throw stones as big as his fists. If the person who commits incest has never been married, the applicable punishment is 100 lashes. This is a view in Islamic law. However, the state of Indonesia does not adhere to Islamic law, so stoning is not enforced.”

The emphasis in this case according to Islamic law from the results of the interview above, the Qur'an strictly prohibits sexual relations between a man and a woman who are blood relatives. In the Qur'an, it is clear who can and cannot marry as in the QS. An-Nisa: 22, 23. The reason it is forbidden to marry siblings is that they are still related by blood because they can give birth to children and grandchildren who are physically and spiritually weak. Kompilasi Hukum Islam article 39 point (1) letter a which state that "With a woman who gives birth or gives birth to her or her offspring",[2] incest or incest in a country that adheres to the Islamic legal system, the legal regulation is stoning.

3.3 Customary Law Arrangements

In addition to Islamic law and positive law, customary law also applies which has become an unwritten agreement in society that becomes a reference in responding to cases of incest or incest.

“According to customary law, incest or incest is strictly prohibited because it violates the norms and values that apply in society. The proper punishment in customary law is to kill the two perpetrators or to expel them from their hometown and not be able to set foot in the village again. The customary language is exile. Because the community considers actions such as incest can bring bad luck to the village community. In determining the sanctions for the perpetrators of the village government, community leaders, religious leaders, and youth leaders consulted and agreed that the two perpetrators and their families were expelled/exiled from the Luwu Regency area and may not return.”[8]

This indicates that customary law sanctions apply to both parties who have forbidden relationships, therefore the punishment imposed on these two perpetrators is customary law.

In the Bugis-Makassar tradition, the term "MALAWENG LUSE" is known, i.e., a man and a woman commit a forbidden act, for example, they have sexual relations, while it is forbidden by customary law for them to marry or live together as husband and wife, or they are oversleeping, both those who are not married, as well as those who are widowed/widowed or
are still in a married status. This act is seen by the Bugis-Makassarese as a very disgraceful act, equated with "animal actions" (Bugis: GAU OLO'-OLO', Makassar: Olo'-Olo') which results in the emergence of 'siri', loss of dignity as human beings, causing difficulties for parents and relatives (especially women) and will bring danger and calamity to society.

Based on the results of the Interview Tuesday, February 16, 2021, with Mr. Suradi Dm, the Village Head, Lamunre Tengah Village said that:

"This case of incest according to the community brings disaster and disaster, therefore the community is very concerned about and takes action against the perpetrators of this incest or incest. because it is contrary to the prevailing traditional values. That's why the community agrees to expel them from the village if they follow customary law without regard for human rights, perpetrators of blood relations can be drowned in the sea."[8]

Customs are rules, and habits that grow and are formed from a community or area that are considered to have value and are upheld and obeyed by the supporting community. In Indonesia, the rules regarding this aspect of human life become binding legal rules called customary law.

3.4 Civil Law Arrangements

If the incestuous perpetrator performs a legal marriage in court and later it is discovered that these two people are related by blood or blood (which cannot be married), the court can cancel the marriage relationship. Then the marital status is said to be invalid.

If from the void marriage there is a child born, then the child is still declared as a legitimate child, because the termination of the marriage due to the cancellation does not apply to children born from the marriage. Ex-wife status, with the annulling of the marriage, then her status becomes a widow. As for the rights of the ex-wife as a result of the termination of this marriage, the court may oblige the ex-husband to provide living expenses.

The kinship status of the two perpetrators of incest or incest is declared invalid because in Indonesia what is stated as a family is a person united by marriage, blood, and adoption ties. If someone has a relationship outside of marriage and has a child, then they cannot be declared as a family through marriage ties, the relationship they do is illegal or illegal according to positive law in Indonesia.

If the perpetrator of incest has never married, then the family status of the perpetrator cannot be said to be a legal family according to positive law. Meanwhile, the status of the child resulting from this blood relationship is illegitimate to be the child of his biological father. Therefore, in guardianship the biological father may not be the guardian for the child, the guardian is the legal guardian in this case represented by the office of religious affairs.

Likewise with regard to inheritance rights as emphasized in Article 171 letter c of the KHI heirs are people who at the time of death have blood relations or marital relations with the heirs, are Muslim, and are not hindered by law from becoming heirs. This is intended to provide legal protection to children who have been born in a marriage. Child protection is defined as all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and protection from violence and discrimination.

4 Conclusion

The law that regulates marriage is Undang-Undang Nomor 1 Tahun 1974 tentang perkawinan sebagaimana telah diganti dengan Undang-Undang No. 16 Tahun 2019. In addition, marriage is also explained in the KHI (Islamic Law Compilation) article 39 point (1) letter a which state that: a man is not allowed to marry a woman who gives birth or gives birth to her or her offspring. In addition, civil law also regulates the prohibition of marriage which is explained in Article 30 of the KUH Perdata: Marriage is prohibited between those who have blood relations with each other in an upward or downward line, either because of a legal birth or because of illegitimate birth, or because of sideways marriage, between brothers and sisters, legal or illegitimate". Thus, both religious law and state law of incest (Incest) do not give space at all. According to Islamic law, incest is strictly prohibited or forbidden in the religion as stated in the QS. An-Nisa: 22, 23 who should not and may not marry. By customary law, it is strictly forbidden to have incest or incest because it violates the norms and values that apply in society.

Acknowledgments

Thank you to Universitas Negeri Makassar for funding this research through the Institute for Research and Community Service. Thank you to the Dean of the Faculty of Social Sciences and Law and his staff for all their support during the research.

References

3. KUH Perdata, “Burgerlijk Wetboek voor Indonesie”.
5. Kitab Undang-Undang Hukum Pidana.
8. Tri Ainun W, “Studi kasus hubungan suami
istri diluar nikah saudara kandung (Incest) di Desa Lamunre tengah Kec. Belopa Utara Kab. Luwu.”