

# CRIMINAL PROVISIONS IN GOVERNMENT REGULATION NUMBER 9 OF 1975 ACCORDING TO LAW NUMBER 12 OF 2011

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**Abstract:** This paper aims at explaining the criminal provisions in government regulation number 9 of 1975, according to Law Number 12 of 2011. The research method used in conducting this article is a qualitative research method with a normative juridical research type using the statute approach. Sources of data are divided into two forms, namely primary data sources obtained directly from main sources such as the head of the Regional Office of the Ministry of Religions of the Republic of Indonesia, Commission III of the House of Representatives of the Republic of Indonesia, the Head of the High Court of Religion of North Sumatra, and Experts in the field of Islamic Law. In addition, laws and regulations and the book of *ushul fiqh* are used as secondary materials. Data analysis was carried out in the stages of data reduction, data presentation, and conclusion. The results show that the criteria for marriage that can be punished or fined are divided into two, namely, First, is the presence of intention. Second, the action is detrimental to another person, in other words, the injured person reports or complains about the detrimental action to the police so that it can be processed because the provision is a complaint offense.

**Keywords:** crimes; Government Regulation Number 9 of 1975; Law Number 12 of 2011; *maqâshid al-Syarî`ah*.

**Abstrak:** Tulisan ini bertujuan untuk menjelaskan ketentuan pidana dalam peraturan pemerintah nomor 9 tahun 1975 menurut Undang-Undang Nomor 12 Tahun 2011. Adapun metode penelitian yang digunakan dalam penulisan artikel ini adalah metode penelitian kualitatif dengan jenis penelitian yuridis normative menggunakan pendekatan statute approach. Sumber data terbagi pada dua bentuk yaitu sumber data primer yang diperoleh langsung dari sumber utama seperti Kepala Kanwil Kementerian Agama RI, Komisi III DPR RI, Ketua Pengadilan Tinggi Agama Sumatera Utara, dan Pakar dibidang hukum Islam. Selain itu, peraturan perundang-undangan dan kitab *ushul fiqh* dijadikan sebagai bahan sekunder. Analisis data dilakukan dengan tahapan reduksi data, penyajian data, dan kesimpulan. Hasil penelitian menunjukkan bahwa kriteria pernikahan yang dapat dipidana atau didenda terbagi kepada dua, yaitu; Pertama, adalah adanya niat atau unsur kesengajaan. Kedua, tindakan tersebut merugikan orang lain, dengan kata lain, bahwa orang yang dirugikan tersebut melaporkan atau mengadukan perbuatan yang merugikannya kepada pihak kepolisian, sehingga dapat diproses, karena ketentuan tersebut merupakan delik aduan.

**Kata kunci:** pidana; Peraturan Pemerintah Nomor 9 Tahun 1975; Undang-Undang Nomor 12 Tahun 2011; *maqâshid al-Syarî`ah*.

## Introduction

In Indonesia, the issue of marriage is regulated through Law Number 1 of 1974 concerning Marriage, which then in its implementation the government formed Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage.<sup>1</sup>

However, the implementation of law number 1 of 1974 does not force citizens to comply with it, one of the causes is the absence of criminal sanctions.

In its development, criminal provisions are considered important and necessary to be contained in the law to strengthen and emphasize the implementation of the law. However, the fact is that criminal provisions are not regulated in Law Number 1 of 1974, but are regulated in Government Regulation Number 9 of 1975 as contained in

<sup>1</sup> Ahmad Bahiej, "Tinjauan Yuridis Atas Delik Perzinahan (Overspel) Dalam Hukum Pidana Indonesia," *Sosio Religia*, vol 2, no. 2 (2003), p. 20.

Chapter IX Article 45.<sup>2</sup> The problem that arose later from the absence of criminal sanctions in law number 1 of 1974 concerning marriage was in terms of its implementation and enforcement.

Law Number 1 of 1974 concerning Marriage which has been amended into Law Number 16 of 2019<sup>3</sup> has no coercive force against the officers, in this case, the employees of the marriage registrar of the Ministry of Religious Affairs and the Bride-to-be to comply with the law. This is due to the absence of criminal sanctions given so that the law becomes infirm.<sup>4</sup>

When it is viewed from the criminal provisions in Government Regulation Number 9 of 1975 as contained in Chapter IX Article 45,<sup>5</sup> connected with the current conditions, when an offense committed by the community and the marriage registrar official against one of the articles in government regulation No. 9 of 1975, then the violation cannot be prosecuted before the court. This is because law number 12 of 2011 concerning the Establishment of Laws and Regulations does not accommodate criminal provisions in Government Regulations.<sup>6</sup>

Based on a preliminary study conducted by researchers at 7 Religious Affairs Offices of Labuhanbatu Regency, several criminal provisions are violated by the community, including article 3 and article 40 of Government Regulation number 9 of 1975. The Rantau Prapat Religious Court noted that during 2018 - 2019 631 married couples registered applications for Marriage Certificates. The application for Marriage Certificate occurred because the marriage carried out by the married couple was not recorded at the Office of Religious Affairs, so it required a copy of the determination

of the Religious Court as one of the conditions for obtaining a marriage book from the Office of Religious Affairs.

Researchers found a case in Labuhanbatu, where a husband married secretly to another woman because he did not get permission from the first wife, but the existence of the marriage was eventually sued by the first wife to the Religious Court until a divorce verdict was issued. The actions of the first wife were carried out because there was no other way to prevent polygamous marriages from occurring without the wife's permission. This case does not only occur in the Labuhanbatu regency but also other places.

Based on interviews conducted by researchers with marriage registrar officials in Labuhanbatu, marriage registrar officials did not check in detail. So that several violations occur, for example regarding the marriage age of the prospective bride and groom, as stipulated in Law number 1 of 1974 article 7 paragraph 1, namely that the marriage age of the woman is 16 and the man is 19. Then based on the decision of the Constitutional Court Number 22/PUU-XV/2017 the DPR revised that the marriage age of men and women is 19, and in paragraph 2 it is stated, "in the event of deviations from the age provisions, as referred to in paragraph (1), the parents of the male and/or the female can request dispensation to the court on very urgent grounds accompanied by sufficient supporting evidence.

In its implementation, there is a marriage that occurs between a mature and immature woman, in the end, the marriage broke up halfway due to immaturity in the household. This case is one of the shreds of evidence of the seriousness of the Officials of the Office of Religious Affairs in examining the files of the prospective bride and groom who are going to carry out the marriage.

Philosophically, Douglas Hausak talked about over-criminalization which mentions that the state criminalizes citizens too much. Over criminalization is not only in purely criminal acts but also reaches *speech*<sup>7</sup> and even administrative activities such as

<sup>2</sup> Riskyanti Juniver Siburian, "Marital Rape Sebagai Tindak Pidana Dalam RUU-Penghapusan Kekerasan Seksual," *Jurnal Yuridis*, vol 7, no. 1 (2020), p. 89.

<sup>3</sup> Ritonga Hairunah Paujiah, "Efektifitas Pasal 45 PP. No.9 Tahun 1975 Tentang Ketentuan Pidana Perkawinan (Studi Di Lingkungan KUA Kota Padangsidempuan)," *Thesis (STAIN Padang Sidempuan*, 2013), p. 20.

<sup>4</sup> Mohd Idris Ramulyo, "Hukum Perkawinan Islam: Suatu Analisis Dari Undang-Undang No. 1 Tahun 1974 Dan Kompilasi Hukum Islam," (Jakarta: Bumi Aksara, 1996), p. 89.

<sup>5</sup> Riskyanti Juniver Siburian, "Marital Rape Sebagai Tindak Pidana Dalam RUU-Penghapusan Kekerasan Seksual," *Jurnal Yuridis*, vol 7, no. 1 (2020), p. 89.

<sup>6</sup> Amiur and Azhari Akmal Tariga, "Hukum Perdata Islam Di Indonesia", (Jakarta: Kencana, 2006), p. 67.

<sup>7</sup> Michal Buchandler Raphael, "Overcriminalizing Speech," (*Cardozo Law Review*, 2015), p. 179

taxation and others<sup>8</sup>. So the criminal provisions in government regulation number 9 of 1975 can be categorized as administration, but why in the title mentioned criminal provisions.<sup>9</sup>

Legally standing, the existence of Government Regulation number 9 remains valid to this day, because not one law or regulation cancels it, but if reviewed using law number 12 of 2011 concerning the formation of laws and regulations, there is a conflict that requires the cancellation of the government regulation.

This is what is important to discuss in this article, regarding criminal provisions in government regulation number 9 of 1974 according to Law Number 12 of 2011.

## Method

The research method used in writing this article is a qualitative research method with a normative type of juridical research<sup>10</sup> and a Statute Approach<sup>11</sup> namely by analyzing the problems contained in Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 using the approach of law Number 12 of 2011 concerning the Establishment of Laws and Regulations. The data sources are divided into two forms, namely primary data sources obtained directly from main sources such as the head of the regional office of the Ministry of Religious Affairs of the Republic of Indonesia, Commission III of the House of Representatives of the Republic of Indonesia, the Chairman of the North Sumatra High Religious Court, and experts in the field of Islamic Law. After the data is obtained, an analysis is carried out in steps<sup>12</sup>; data collection,

data reduction, data presentation, and conclusion, the process circularly takes place during the study.

## Establishment of Government Regulations and Discretionary Authority of Government Regulations

To get a clearer description of government regulations, there are characteristics inherent in government regulations as expressed by A. Hamid S. Attamimi, there are at least five special characteristics, namely<sup>13</sup>:

- 1) Government regulations cannot be formed without the existence of a law that is the parent;
- 2) Government regulations cannot include criminal sanctions if the law in question does not include criminal sanctions;
- 3) Government regulatory provisions cannot add or subtract provisions of the relevant laws;
- 4) To carry out, describe, or detail the provisions of a statute, government regulation may be established even if the provisions of the law do not expressly request;
- 5) The provisions of government regulations contain regulations or a combination of regulations and stipulations, government regulations do not contain determinations solely.

In the process of making Government Regulations, there is only a process of drafting, determining, and promulgating.<sup>14</sup> The discussion stage is only in the process of forming the act. The establishment of Government Regulations and Presidential Regulations does not go through the discussion stage because it does not involve the DPR.

Planning for the preparation of Government Regulations is carried out in a program for the preparation of Government Regulations. The planning for the preparation of Government Regulations contains a list of titles and subject

<sup>8</sup> Emir Ardiansyah, Ulya Kencana, and Romli SA, "Konstitusionalitas Ancaman Pidana Terhadap Kejari (Penetapan Status Barang Sitaan Dan Prekursor Narkotika)," *Wajah Hukum*, vol 5, no. 2 (2021): 481.

<sup>9</sup> Hairunah Paujiah, "Efektifitas Pasal 45 PP. No.9 Tahun 1975 Tentang Ketentuan Pidana Perkawinan (Studi Di Lingkungan KUA Kota Padangsidempuan)," p. 79.

<sup>10</sup> Zainal Asikin and Amiruddin, *Pengantar Metode Penelitian Hukum*, (Jakarta: P.T.Raja Grafindo, 2008), 143.

<sup>11</sup> Bambang Prasetyo and Lina Miftahul Jannah, *Metode Penelitian Kualitatif Teori Dan Aplikasi*, (Jakarta: Raja Grafindo Persada, 2007), 78.

<sup>12</sup> Adhi Kusumastuti and Ahmad Mustamil Khoiron, *Metode Penelitian Kualitatif*, (Semarang: Lembaga Pendidikan Sukarno Pressindo (LPSP), 2019), p. 78.

<sup>13</sup> Laurensius Arliman S, "Peran Lembaga Catatan Sipil Terhadap Perkawinan Campuran Berdasarkan Undang-Undang Perkawinan," *JCH (Jurnal Cendekia Hukum)*, vol. 4, no. 2 (2019), p. 288.

<sup>14</sup> Andrew Jeklin, "Proses Pembentukan Undang-Undang Dan Peraturan Pemerintah Pengganti Undang-Undang," *Mimbar Yustitia*, vol. 3, no. 2 (2019), pp. 1-23.

matter of the contents of the Draft Government Regulation (abbreviated as RPP) to carry out the Law as appropriate. Planning is set for 1 (one) year. Planning for the preparation of Government Regulations is coordinated by the minister who organizes government affairs in the field of law stipulated by the Presidential Decree.

Rpp comes from ministries and/or non-ministerial government agencies following their field of duty. In certain circumstances, ministries or non-ministerial government agencies may apply for rpps outside the planning for the preparation of Government Regulations. The draft government regulation is made based on the needs of the law or the decision of the Supreme Court.

In the preparation of the RPP, the initiators formed inter-ministerial committees and/or non-ministerial government agencies. It is necessary to harmonize, round up, and strengthen the conception of RPP coordinated by the minister who organizes government affairs in the field of law.

Procedures for the formation of inter-ministerial and/or inter-ministerial committees, harmonizing, drafting, and submitting draft government regulations are regulated by Presidential Regulations. The results of the approved RPP discussions will then be sent back by the secretary of state to be conveyed to the President to be determined and signed.

The RPP, which has been approved by the president, is then passed by the president into government regulation. Then the Secretary of State stipulates the number and year. The promulgation of Government Regulations is carried out by the Minister of Law and Human Rights by signing the manuscript of the regulations and member numbers of the State Gazette/State Gazette and Additional State Sheet/Additional State Gazette. Publication of the State Gazette or State gazette no later than 14 (fourteen) days from the promulgation.

In terms of language, discretion is policy, discretion, freedom to determine or choose, or freedom to act. Discretion is also called *Freies Ermessen*.

According to Philipus M. Hadjon, freedom of action means the freedom to direct regulations in

concrete situations,<sup>15</sup> freedom of such concrete situations, and freedom of action even if there is no or no express arrangement.

Some elements must be met in exercising discretionary authority. According to Syachran Basa, the notion of discretion is the goal of state life that must be achieved, then involves the state administration in carrying out its very complex, broad public service tasks, and entering all sectors of life.

In terms of state administration, it has the flexibility to determine policies, however, the attitude of its actions must be accountable both morally and legally.

Meanwhile, Gayus T. Lumbun defines discretion as a policy from state officials from the center to the regions which essentially allows public officials to carry out a policy that violates the law, with three conditions. Namely, in the public interest, it is still within the limits of its jurisdiction and does not violate the General Principles of Good Governance (AUPB).

Based on the definitions above, it can be understood that there are elements that must be fulfilled by a discretion, namely: <sup>16</sup>

- a) Discretion exists because of the public service duties owned by the administrative organs of the State;
- b) The administrative organs of the State in carrying out these duties are given flexibility in determining policies;
- c) The policies taken by the administrative organs of the State can be accounted for both morally and legally.

## Legal Principles in the Formation of Laws and Regulations

The principle in English is called principle, while in the Big General Dictionary Indonesian

<sup>15</sup> Priestly Yustika Putri, Prija Djatmika, and Dhiana Puspitawati, "Implikasi Yuridis Perjanjian Perkawinan Yang Dibuat Selama Dalam Ikatan Perkawinan Terhadap Utang Bersama Pasca Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015," *Jurnal Ilmiah Hukum LEGALITY*, vol. 26, no. 1 (2018), p. 95.

<sup>16</sup> Boyce Alvhan Clifford, Erlin Indarti, and R.B. Sularto, "Telaah Paradigmatik Tentang Penerapan Diskresi Pada Pertimbangan Dan Putusan Hakim Dalam Perkara Pidana Dengan Terdakwa Labora Sitorus," *DIPONEGORO LAW REVIEW*, vol. 5, no. 41 (2016), pp. 1–13, <https://ejournal3.undip.ac.id/index.php/dlr/article/view/10960/10629>.

principle can mean a basic law or fundament, that is, something on which to think or argue. In addition, principles are also interpreted as the basis of ideals. The principle of law is something very basic in law that must be practiced.

Legislation must not contradict the principle in law. Similarly, the implementation or implementation of the law in everyday life and all judges' decisions must always refer to the principle in the law so that it must not conflict with it.

The concept of forming laws and regulations in Indonesia must strictly follow the basic norms and principles of the formation of laws and regulations. Thus, the formation of laws and regulations will form laws that are following the legal ideals of the Indonesian nation itself by prioritizing a good concept in forming a good law, which can regulate, maintain and protect all Indonesian people, nation, and state.<sup>17</sup>

The discussion of the principles of laws and regulations is closely related to the legal system in force in Indonesia which tends to adhere to civil law as a result of the repressive attitude of the Dutch colonization which adheres to civil law. Broadly elaborating, the legal system is divided into two types, namely the Continental European system that developed in Europe except for the British region, and the Anglo Saxons who developed in the British territory. In this system, the law is more formed through legislation and there is even a tendency to codify and unify or at least compile.

Understanding legal principles needs to be an ethical demand in understanding the prevailing laws and regulations. The principle of law contains ethical demands, and it can be said that through the principle of law, the rule of law changes its nature to be part of an ethical order.<sup>18</sup> The legal principle is a basic rule or is a legal principle that is still abstract. It can also be said that the principle in law is the basis behind a concrete rule and how the law can be implemented.

According to The Liang Gie, a principle is a general postulate expressed in general terms without suggesting specific ways of its execution, which are applied to a series of deeds to be appropriate instructions for the deed,<sup>19</sup> Satjipto Rahardjo said that this legal principle is the core of legal science<sup>20</sup>. We mention so because first, it is the broadest foundation for the birth of a rule of law.

Concerning the formulation of the material content of legislation, legal theories and principles have a special position in the mechanism and substance of laws and regulations. Legal theories and principles can be said to be the basis and benchmark for whether a material content of law has been able to carry the purpose of justice in it. Thus, the legal theories and principles in the formation of laws and regulations become very important to be discussed.

### **Criminal Provisions in Government Regulation Number 9 of 1974 According to *Maqâshid al-Syarî`ah***

When viewed from the side of the *mudharat*, unregistered marriages (*sirri*) have an impact on the sustainability of a household both for husbands, wives, and children, including:

*First*, there is no permanent legal force against the legality of the marriage, so if there are wife's rights violated by the husband, the wife cannot legally claim these rights.

*Second*, the marriage contract carried out tends not to be legally proven and the husband and wife who carry out the unregistered (*sirri*) marriage contract cannot prove that the two are legal couples in the perspectives of Islamic law or the State. Although there are witnesses, because age is limited, they can no longer be a witness when necessary. In addition, we may live a life of moving to another place and area, so that when evidence of the marriage is needed, the husband and wife of the unregistered (*sirri*) marriage contract are unlikely to present the witness.

<sup>17</sup> Ferry Irawan Febriansyah, "Konsep Pembentukan Peraturan Perundang-Undangan Di Indonesia," *Perspektif*, vol. 21, no. 3 (2016), pp. 220–229, <http://jurnal-perspektif.org/index.php/perspektif/article/view/586>.

<sup>18</sup> Fence M Wantu, *Cara Cepat Belajar Hukum Acara Perdata*, (Jakarta: Reviva Cendekia, 2002), p. 13.

<sup>19</sup> Noor Fatimah Mediawati, "Eksistensi Asas Legalitas Dalam Penegakan Hak Asasi Manusia: Sebuah Kajian Dilematis," *Fairnes and Justice*, vol. 7, no. 2 (2014), pp. 107–15.

<sup>20</sup> Otong Rosadi, "Hukum Kodrat, Pancasila Dan Asas Hukum Dalam Pembentukan Hukum Di Indonesia," *Jurnal Dinamika Hukum*, vol. 10, no. 3 (2010), pp. 282–290.

*Third*, the interests of the husband and wife in living a domestic life cannot be protected. *Fourth*, because there is no evidence of the existence of the marriage, interests such as related to the manufacture of Identity Cards (KTP), Family Card (KK), Passports, Child Birth Certificates, or related to politics, namely the right to vote or be elected in general elections cannot be served. All of that is because there is no proof of marriage in the form of a Marriage Certificate/Marriage Book which ultimately cannot make an ID and Family Card, while to make a child's birth certificate or passport, it is required to have a KTP, KK, and Marriage Book.

*Fifth*, *sirri* marriage contracts tend to make one of the couples, especially the husband, freer to abandon his obligations and even treat his wife with violence. *Sixth*, *sirri* marriage contracts result in interfering with religious benefit, religious teachings tend to be practiced chaotically. The chaos can be described as that if a marriage contract is not officially recorded before an authorized official, namely, the Registrar of Marriages, then a marriage contract like this tends to be uncontrollable. Finally, it can open the opportunity for the husband to remarry another woman without first obtaining formal approval from the first wife through the trial process. This kind of behavior tends to repeat itself until finally, the husband has the potential to have a wife beyond the religious provisions. Finally, the benefit of religion is also disturbed by the behavior as described.

*Seventh*, *sirri* marriage contract can result in affecting the psychological problems of wives and children, they also feel uncomfortable and uneasy. Especially when the child enters school age and when it is registered, every educational institution always requires the registrant (parents of the child) one of which is a birth certificate. The requirement to make a child's birth certificate is a marriage book and the person who has a marriage book is the person who when carrying out the marriage contract records his marriage. If the marriage book is not owned, the birth certificate cannot be given because of legal evidence to state that the child is the legal child of a married couple who wants to make the birth certificate of the child not owned.

*Eighth*, *sirri* marriage contract can affect the

benefit of reason, it is said that because with the presence of discomfort and even the loss of self-determination because the parents do not have a marriage book, the child cannot think properly. This means an uncomfortable psychological condition because it feels that its existence is a disgrace in human life it can result in a loss of self-confidence. The child eventually began to avoid getting along more and preferred to mount at home.

*Ninth*, *sirri* marriage contract can have the effect of affecting the benefit of offspring. It is said so because by not having a clear identity of legally demonstrable origin, so it tends to be regarded by people as children as the result of unauthorized relationships.

*Tenth*, *sirri* marriage contract can have the effect of affecting the benefit of property because the unclear identity of marriage and marriage cannot be proven through the marriage book, the identity of the child born is also unclear, so that when the parents die, the child finds it difficult to obtain the inheritance of his parents, including the wife as a result of this *sirri* marriage, she also finds it difficult to declare herself as the legal heir, either as the first wife or as the second wife and so on.

### **Criminal Provisions in Government Regulation Number 9 of 1975 According to Law Number 12 of 2011**

In principle, the purpose of the law was to form an orderly and safe society. So the 1945 Constitution gives a mandate to the legislative and executive institutions to form a legal order through laws and regulations as an instrument to bring order to human life and also as a guide for society to carry out its activities as a state society.

To establish legal compliance and also maintain the implementation of laws, the Legislature and the executive can contain sanctions as an effort to control the course of laws, as well as become an instrument of the State to punish citizens who violate the law.

That is the basis for the imposition of criminal provisions against the marriage law. Because marriage does not only concern the affairs of two people (husband and wife), but also there is a state interest in it, which is to provide services equitably to all citizens. So the new order government

at that time saw the urgency of notification of the will of marriage through the registration of marriages to the number of population data, so it was emphasized through criminal instruments. The spirit of the publication of criminal provisions began when the government issued law number 22 of 1946 concerning the registration of marriages, *talaks*, and references that provide fines for people who do not notify marriage as referred to in Article 3 of this law.

As discussed in the background of this research, the State has provided an instrument to emphasize recording through the provision of sanctions in the form of administrative and criminal confinement, but it has not been implemented because according to the views of law enforcement, that criminal provisions in marriage both in Law Number 22 of 1946 concerning *Talak* and Referendum as well as contained in Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage is a complaint, so as long as no person is harmed and no one reports, then the act cannot be punished, even though the act has fulfilled the criminal elements, namely:

- a. Deeds;
- b. The act is against the law (*Wederechttelijk*);
- c. The act is criminally threatened by law;
- d. The culprit must be a person capable of accountability; and
- e. The deed happened because of the fault of the maker.

A person's actions can be punished if there is a mistake in it, and the mistake is threatened with criminal punishment by the law or other regulations, then the marriage contract that is not registered is a mistake and has fulfilled the criminal elements, let alone done deliberately, then the act has been against the law (*wederechttelijk*).

Against the law referred to is an act of resistance to order or threat contained in the law or other regulations, for example violating the article of Government Regulation Number 9 of 1975 which is the implementing regulation of Law Number 1 of 1974 concerning Marriage, it is stated in article 3 paragraph 1 that "Everyone who will carry out the marriage informs his will to the

Registrar Employee at the place of marriage will be carried out". The article has clearly ordered notice of his intentions and will to the registrar of marriages. Then in paragraph 2 "The notice in paragraph (1) shall be made at least 10 (ten) working days before the marriage takes place), the order is accompanied by the threat of sanctions as contained in Chapter IX Article 45.

## Conclusion

Based on the results of research that has been carried out, it is revealed that the criteria for marriage that can be convicted or fined are divided into two, namely First, is the existence of intentions or elements of intentionality, namely from a married couple. Regardless of their intention or motivation in carrying out the act, especially since the couple is aware of the existence of an article or provision governing the recommendation to register a marriage or a notice of marriage will, but still violate it, then it can be punished. If the distance between their residence and the Office of Religious Affairs is not far or can be reached in only a few hours, but it is not done, then the act can be categorized as criminal. Second, the act harms others, in other words, the aggrieved person reports or complains about the detrimental act to the police so that it can be processed. Because the provision is a complaint, for example, if the parents of the bride feel aggrieved because their child does not get a living or is treated arbitrarily on the pretext that their marriage is not registered, then the parents of the bride can complain about the act.

## References

- Amiur, and Azhari Akmal Tariga, "Hukum Perdata Islam Di Indonesia," Jakarta: Kencana, 2006.
- Ardiansyah, Emir, Ulya Kencana, and Romli SA, "Konstitusionalitas Ancaman Pidana Terhadap Kejari (Penetapan Status Barang Sitaan Dan Prekursor Narkotika)" *Wajah Hukum*, vol 5, no. 2, 2021.
- Arliman S, Laurensius, "Peran Lembaga Catatan Sipil Terhadap Perkawinan Campuran Berdasarkan Undang-Undang Perkawinan." *JCH (Jurnal Cendekia Hukum)*, vol. 4, no. 2, 2019.

- Asikin, Zainal, and Amiruddin, *Pengantar Metode Penelitian Hukum*, Jakarta: P.T.Raja Grafindo, 2008.
- Bahiej, Ahmad, "Tinjauan Yuridis Atas Delik Perzinahan (Overspel) Dalam Hukum Pidana Indonesia," *Sosio Religia*, vol 2, no. 2, 2003.
- Buchandler Raphael, Michal, "Overcriminalizing Specch, *Cardozo Law Review*, 2015.
- Clifford, Boyce Alvhan, Erlyn Indarti, and R.B. Sularto, "Telaah Paradigmatik Tentang Penerapan Diskresi Pada Pertimbangan Dan Putusan Hakim Dalam Perkara Pidana Dengan Terdakwa Labora Sitorus." *DIPONEGORO LAW REVIEW*, vol. 5, no. 41, 2016. <https://ejournal3.undip.ac.id/index.php/dlr/article/view/10960/10629>.
- Hairunah Paujiah, Ritonga, "Efektifitas Pasal 45 PP. No.9 Tahun 1975 Tentang Ketentuan Pidana Perkawinan (Studi Di Lingkungan KUA Kota Padangsidempuan)," *Thesis*, STAIN Padang Sidempuan, 2013.
- Irawan Febriansyah, Ferry, "Konsep Pembentukan Peraturan Perundang-Undangan Di Indonesia," *Perspektif*, vol. 21, no. 3, 2016. <http://jurnal-perspektif.org/index.php/perspektif/article/view/586>.
- Jeklin, Andrew, "Proses Pembentukan Undang-Undang Dan Peraturan Pemerintah Pengganti Undang-Undang." *Mimbar Yustitia*, vol. 3, no. 2, 2019.
- Kusumastuti, Adhi, and Ahmad Mustamil Khoiron. *Metode Penelitian Kualitatif*. Semarang: Lembaga Pendidikan Sukarno Pressindo (LPSP), 2019.
- Mediawati, Noor Fatimah, "Eksistensi Asas Legalitas Dalam Penegakan Hak Asasi Manusia: Sebuah Kajian Dilematis," *Fairnes and Justice*, vol. 7, no. 2, 2014.
- Muhlizi, Arfan Faiz, "Reformulasi Diskresi Dalam Penataan Hukum Administrasi," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, vol. 1, no. 1, 2012.
- Prasetyo, Bambang, and Lina Miftahul Jannah, *Metode Penelitian Kualitatif Teori Dan Aplikasi*, Jakarta: Raja Grafindo Persada, 2007.
- Putri, Priesty Yustika, Prija Djatmika, and Dhiana Puspitawati, "Implikasi Yuridis Perjanjian Perkawinan Yang Dibuat Selama Dalam Ikatan Perkawinan Terhadap Utang Bersama Pasca Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015," *Jurnal Ilmiah Hukum LEGALITY*, vol. 26, no. 1, 2018.
- Ramulyo, Mohd Idris, *Hukum Perkawinan Islam: Suatu Analisis Dari Undang-Undang No. 1 Tahun 1974 Dan Kompilasi Hukum Islam*, Jakarta: Bumi Aksara, 1996.
- Ranggawidjaja, Rosjidi, *Pengantar Ilmu Perundang-Undangan Indonesia*, Bandung: Mandar Madju, 1998.
- Rosadi, Otong, "Hukum Kodrat, Pancasila Dan Asas Hukum Dalam Pembentukan Hukum Di Indonesia," *Jurnal Dinamika Hukum*, vol. 10, no. 3, 2010.
- Septarini, Rafiah, "Analisis Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017 Tentang Batas Usia Nikah Bagi Perempuan." *Jurnal Ulumul Syar'i*, vol. 8, no. 1, 2019. <https://ejournal.stishid.ac.id/index.php/uls/article/download/68/44/186>.
- Siburian, Riskyanti Juniver, "Marital Rape Sebagai Tindak Pidana Dalam RUU-Penghapusan Kekerasan Seksual," *Jurnal Yuridis*, vol 7, no. 1, 2020.
- Wantu, Fence M, *Cara Cepat Belajar Hukum Acara Perdata*, Jakarta: Reviva Cendekia, 2002.