

Juridical Analysis of Criminal Liability for the Crime of Impaired Marriage in the Criminal Code (Study Decision Number 17/ Pid.B/ 202/ PN. Blg)

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Received : 25 July 2025

Revised : 05 August 2025

Accepted : 30 August 2025

Published : 25 September 2025

DOI : <https://doi.org/10.54443/ihert.v7i1.501>

Link Publish : <https://proceeding.unefaconference.org/index.php/IHERT>

Abstract

Criminal liability for the crime of obstructing marriage is regulated in article 279 of the Criminal Code which states that anyone who enters into a marriage even though he knows that his existing marriage or marriages are a legal obstacle to that, or whoever enters into a marriage even though he knows that the marriage or marriages of another party become Obstruction to do so is punishable by a maximum imprisonment of five years. There is an example of a case regarding an obstructed marriage as contained in Decision Number 17/Pid.B/2021/PN.Blg, the defendant's actions are regulated and punishable by crime in Article 279 paragraph (1) 1 of the Criminal Code. 1. Declare that the defendant, Estomihi Siahaan, as mentioned above, has been legally and convincingly proven guilty of committing the crime of "entering into a marriage even though knowing that his existing marriage was a legal obstacle to that" as in the first alternative indictment; 2. Sentence the Defendant to prison for 7 (seven) months.

Keywords: *Criminal Liability, Criminal Offences, Obstruction of Marriage, Criminal Code*

1. INTRODUCTION

Indonesia is a pluralistic country. It is called a pluralistic country because Indonesia has many tribes, races, cultures and religions. This diversity causes differences in views on several matters, such as the implementation of marriage. The differences in the implementation of marriage are caused by cultural diversity or the religion adhered to. Since 1974, Indonesia has had a national marriage law as a basic regulation which also accommodates the principles and provides a legal basis for marriage which has been the guideline and has been applied to various groups in society. Therefore, whatever ethnicity, race and religion they adhere to while they are in Indonesia, they must carry out a marriage based on marriage law as outlined in Law Number 1 of 1974 concerning Marriage. Marriage is intended to achieve happiness and peace in human life, only through the door of marriage can a man and woman legally fulfill their biological needs. In Sharia, through marriage, Allah SWT also shows how great his love is for humans and how vast Allah SWT's knowledge is of human needs. Humans, who from birth are equipped with the potential for lust for the opposite sex, need a means to channel this potential. If this potential is not channeled in a directed manner, it will give rise to various vulnerabilities. Article 279 of the Criminal Code states that anyone who enters into a marriage knowing that his or her existing marriage or marriages is a legal obstacle to that purpose, or whoever enters into a marriage even though he knows that the marriage or marriages of another party are an obstacle to that, shall be punished with a maximum imprisonment five years. In the Criminal Code CHAPTER XII Crimes Against the Origins of Marriage are regulated in Article 279 of the Criminal Code, namely:

1. Threatened with a maximum imprisonment of five years:

- a. Whoever enters into a marriage knowing that the existing marriage or marriages constitute a valid obstacle to it;
- b. Whoever enters into a marriage while knowing that the marriage or marriages of another party constitute an obstacle to that.

2. If the person who commits an act based on paragraph (1) point 1 conceals to another party that an existing marriage is a legal obstacle to this, he is threatened with imprisonment for a maximum of seven years.
3. Revocation of rights based on Article 35 No. 1-5 can be stated.

The Dutch Criminal Code states that this criminal act is called *dubble huwalijke* or bigamy, because in the Dutch country among all its citizens the principle of monogamy is adhered to, this kind of criminal act always results in two (2) marriages. In Indonesia, among followers of the Islamic religion, it is possible for a man to legally have 2 (two), 3 (three), or 4 (four) wives. Therefore, among them, a man commits a criminal offense under Article 279 (KUHP), this is what happens when he carries out his 5th marriage after 4 (four) legal marriages. For the wife, getting married a second time is already a criminal offense. In Islam, polygamy is permitted with a limited number of women and does not require its followers to practice absolute monogamy. Islam does not rule out the possibility of men committing polygamy, but not all men have to do so because not all of them have the ability to commit polygamy. Polygamy is not something that is recommended in Islam, on the contrary, it is also not prohibited. However, Islam provides opportunities for polygamy as an effort to address interests related to the benefit of society and the perpetrators and not as a place for experimentation or just to channel sex. There are examples of cases regarding marriage obstruction as contained in Decision Number 17/ Pid.B/ 2021/ PN. Blg, the chronology of the decision is:

There is an example of a case regarding an obstructed marriage as contained in Decision Number 17/Pid.B/2021/PN.Blg, that the defendant on behalf of ESTOMIHI SIAHAAN together with the witness MINDO SITORUS (Separate Prosecution) on Tuesday 12 February 2019 took place at GPDI Sigordang, whose address is in Sigordang Village, Siantar Narumonda District, Toba District or at least in another place which is still included in the jurisdiction of the Balige District Court, entered into a marriage even though he knew that the existing marriage or marriages were a legal obstacle to that, The defendant committed the act in the following way: That at the time and place as mentioned above, the defendant had entered into a marriage with the witness MINDO SITORUS (Separate Prosecution) which was blessed by the witness Rev. Banggar Hutahaean at the GPDI Sigordang church, Siantar Narumonda subdistrict in accordance with the marriage blessing letter of the Pentecostal Church in Indonesia No. 53 /GJ/GPDJ/HS 2019 dated 12 February 2019 which was issued and signed by the witness Rev. Banggar Hutahaean. That the defendant is still legally married to the witness MELVAWATI ARUAN in accordance with the Marriage Deed Excerpt Number: 1212-KW-04102013-0021 dated 04 October 2013 from the Toba Regency Population and Civil Registry Service. That the defendant entered into a marriage with the witness MINDO SITORUS without the permission and knowledge of his legal wife, namely the victim witness MELVAWATI ARUAN and had not divorced the victim witness until February 12 2019. The defendant's actions are as regulated and punishable by crime in Article 279 paragraph (1) 1 of the Criminal Code. The defendant has been charged by the Public Prosecutor with alternative charges, so the Panel of Judges, taking into account the legal facts mentioned above, immediately chose the first alternative charge as regulated in Article 279 paragraph (1) 1st.

Criminal Code, the elements of which are as follows:

- 1) Whoever;
- 2) Entering into a marriage while knowing that the existing marriage or marriages constitute a legal obstacle.

The judge's decision is as follows:

- 1) Declare that the defendant Estomihi Siahaan mentioned above has been proven legally and convincingly guilty of committing the crime of "entering into a marriage even though he knew that his existing marriage was a legal obstacle to doing so" as in the first alternative indictment;
- 2) Sentenced the Defendant to prison for 7 (seven) months.

1.1 FORMULATION OF THE PROBLEM

1. What elements cause Obstructive Marriage to become a Criminal Act according to the Criminal Code?
2. What is the criminal liability for the crime of obstruction of marriage according to the Criminal Code?
3. What are the Judge's Legal Considerations in Decision Number 17/ Pid.B/ 2021/ PN.Blg)?

3. RESEARCH METHODS

3.1 Types and Nature of Research

The research method used in this research is a type of normative legal research. Normative legal research is research carried out by examining library materials (secondary data) or library legal research. Normative legal research is also referred to as library research or document study, because it is mostly carried out on secondary data

in libraries. In normative research, secondary data as a source/information material can be in the form of primary legal materials, secondary legal materials and tertiary legal materials. The implementation of normative legal research is generally aimed at:

- a. Research legal principles
- b. Research on legal systematics
- c. Research on legal synchronization
- d. Research into legal history
- e. Research on comparative law.

The research approach used in this research is legal research with a statutory approach.

3.1 Data source

By examining various research objects in the form of all legal regulations/norms that only relate to the criminal act of obstructing marriage. The secondary data in this research consists of primary, secondary and tertiary legal materials, namely:

- a. Primary Legal Materials** Primary legal materials are one of the important legal sources for legal scientific research that is normative juridical in nature. Primary legal materials include legal materials that have binding force as the main basis used in the context of research.
- b. Secondary Legal Materials** The use of secondary legal materials is to provide researchers with a kind of "hint" in which direction the researcher is going. Secondary legal materials are legal materials that can provide explanations and strengthen primary legal materials, such as research results, the work of legal experts, textbooks, legal reading books, journals, as well as other legal document materials related to this research.
- c. Tertiary Legal Materials** Tertiary legal materials are supporting legal materials that provide guidance on primary legal materials and secondary legal materials, such as legal dictionaries, encyclopedias, language dictionaries, articles, electronic data sources, the internet and others that are relevant to this research.

3.2 Data Collection Techniques and Tools

- a. Data collection technique** The data collection technique used is to carry out a legal research study in the form of library research, namely by collecting, studying and analyzing statutory provisions relating to law in the civil sector, especially production sharing contracts.
- b. Data collection tools** The data collection tool in this research is through document study, library materials and documents related to the problems raised, this is done to obtain a more complete picture of each data. The next data collection tool, namely an interview guide, was used to interview informants. The informants in this research were the Religious Courts.

c. Data analysis

Data analysis in legal research uses a qualitative approach rather than a quantitative approach, because without using statistical formulas, the use of numbers is only limited to percentage figures so that a clear and comprehensive picture of the problem being studied is obtained. The problem solving procedure uses a descriptive method because the problem being investigated by describing or depicting the condition of the subject/object of research based on facts that appear as they really are.

Describing these facts at the initial stage is aimed at presenting the symptoms in full in the aspect being studied so that the circumstances and conditions are clear. This descriptive method is nothing more than research which is in the nature of finding simple facts (Fact finding) including efforts to show relationships with each other in the aspect being researched. The basic qualitative approach emphasizes patterns of human behavior as seen from the "Frame of Reference" the actor himself, so the individual as the central actor needs to be understood and is the unit of analysis and gets it as part of a whole (holistic).

4. DISCUSSION

4.1 Elements that Cause Marriage to Barriers to Entering into Criminal Offenses

In punishment, the most important thing to describe is the elements of punishment. These elements are divided into elements of criminal acts and criminal liability. The element of a criminal act concerns the perpetrator's actions (actus reus), namely whether or not the actions committed by the perpetrator can be classified as a criminal act. Meanwhile, the element of criminal responsibility concerns the perpetrator of a criminal act (mens rea), namely whether or not the perpetrator can be held accountable. These two elements are described in detail in the formulation of the indictment. Decomposing the elements of punishment is an absolute necessity. This is because

the elements will influence whether or not the criminal act committed is clear or compatible with the formulation of the criminal act regulated in the criminal law and whether or not the perpetrator can be held accountable for his actions. Chairul Huda (2011: 22) said that criminal responsibility can only occur after someone has previously committed a criminal act. Criminal liability is carried out on the basis of the unwritten legal principle "there is no crime without fault". According to the doctrine, the elements of an offense consist of subjective elements and objective elements. These elements can be described as follows:

a. Subjective Elements

Subjective is an element that comes from within the perpetrator. The principle of criminal law states "there is no punishment if there is no mistake" (an act does not make a person guilty unless the mind is guilty or *actus non facit reum nisi mens sit rea*). This means that the error referred to here is an error resulting from error (intention/*opzet/dolus*) and negligence (negligence or *schuld*). In general, experts have agreed that "intentional" consists of three forms, namely

- 1) Deliberation as intent (*oogmerk*);
- 2) Deliberation with definite knowledge (*opzet als zekerheidsbewustzijn*);
- 3) Deliberation with awareness of possibility (*dolus eventualis*).

Meanwhile, there are two forms of negligence that are lighter than intentional. Negligence consists of two, namely: relating to the reasons that exempt the perpetrator from punishment. The nature of being against the law is if the action is contrary to the law, namely regarding prohibitions or orders. Every act that is prohibited and punishable by criminal law regulations must be unlawful. According to Amir Ilyas, there are two types of unlawful acts, namely: Not being careful. Can suspect the act;

b. Objective Elements

Objective elements are elements from outside the actor. This element consists of:

- 1) Human actions take the form of Acts, namely active actions or positive actions; Omission, namely passive or negative actions, namely actions that allow or silence;
- 2) The consequences (results) of human actions are dangerous or destructive, or even eliminate interests defended by law, for example life, liberty, property rights, honor, and so on.
- 3) Circumstances (circumstances) In general, these circumstances are distinguished as follows: Circumstances at the time the act was committed, Circumstances at the time the act was committed;
- 4) The nature of being punishable and the nature of being against the law

4.2 Criminal Liability for the Crime of Impaired Marriage in the Criminal Code (Study Decision Number 17/ Pid.B/ 202/ PN. Blg)

Formally juridically, polygamy in Indonesia is regulated in Marriage Law No. 1 of 1974 concerning Marriage, Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI) for followers of the Islamic faith. Although basically the principle inherent in the marriage law is the principle of monogamy. However, according to Yahya Harahap, the legal principles in this law do not have implications for the principle of absolute monogamy but rather the principle of open monogamy. This is stated explicitly in Article 3 paragraph 1 (one) of the Marriage Law No. 1 of 1974 concerning Marriage which states that:

- a. In principle, in a marriage, a man can only have one wife, and vice versa, a woman can only have one husband.
- b. The court can give permission to a husband to have more than one wife if the parties concerned wish. Then

Article 4 of Law No. 1 of 1974 concerning Marriage states that:

In the event that a husband intends to marry more than one wife as stated in Article 3 paragraph 2 (two) of this Law, he is obliged to submit an application to the court in the area where he lives. The court referred to in paragraph 1 (one) of this article only gives permission to a husband who wants to marry more than one wife if:

- a. The wife cannot carry out her obligations as a wife.
- b. The wife has a physical disability or an incurable disease.
- c. The wife cannot bear children.

Furthermore, Article 5 of Law No. 1 of 1974 concerning Marriage also confirms that: To be able to submit an application to the court as intended in Article 4 paragraph 1 (one) of this Law, the following requirements must be met: a. There is consent from the wife/wives. There is certainty that husbands are able to guarantee the living needs of their wives and children. There is a guarantee that husbands will treat their wives and children fairly. The consent referred to in paragraph 1 letter (a) of this article is not required for a husband if it is impossible for his wife/wives to ask for their consent and cannot be a party to the agreement or if there has been no news from his

wife for at least 2 (two) years or for other reasons that need to be assessed by the court judge. As an example of the case contained in Decision Number 17/Pid.B/2021/PN.Blg, where the defendant on behalf of ESTOMIHI SIAHAAN together with the witness MINDO SITORUS (Separate Prosecution) on Tuesday 12 February 2019 took place at GPDI Sigordang at the address in Sigordang Village, Siantar Narumonda District, Toba District or at least in another place which is still included in the jurisdiction of the Balige District Court, holds a marriage even though they know that the marriage or existing marriages are a legal obstacle to that, the act is committed by the defendant in the following manner:

That at the time and place as mentioned above, the defendant had entered into a marriage with the witness MINDO SITORUS (Separate Prosecution) which was blessed by the witness Rev. Banggar Hutahaeen at the GPDI Sigordang church, Siantar Narumonda subdistrict in accordance with the marriage blessing letter of the Pentecostal Church in Indonesia No. 53 /GJ/GPDJ/HS 2019 dated 12 February 2019 which was issued and signed by the witness Rev. Banggar Hutahaeen. That the defendant is still legally married to the witness MELVAWATI ARUAN in accordance with the Marriage Deed Excerpt Number: 1212-KW-04102013-0021 dated 04 October 2013 from the Toba Regency Population and Civil Registry Service. If you look at the case example above, the defendant violated Article 279 paragraph (1) 1 of the Criminal Code. The defendant has been charged by the Public Prosecutor with alternative charges, so the Panel of Judges, taking into account the legal facts mentioned above, directly chooses the first alternative charge as regulated in Article 279 paragraph (1) 1st.

Criminal Code, the elements of which are as follows:

- a. Whoever;
- b. Entering into a marriage while knowing that the existing marriage or marriages constitute a legal obstacle.

It is known that in Indonesia, which was a Dutch colony, it uses legal products from the Netherlands so that it only adheres to monogamy for marriage, so if you violate these rules you can be subject to criminal sanctions in accordance with the judge's decision. So, if it is related to the theory of criminal responsibility, this act fulfills the elements of criminal responsibility, which include the existence of a criminal act, namely an obstructed marriage committed by the defendant, the existence of a mistake and the defendant being able to be held criminally responsible.

5. CLOSING

Impediment Marriage is a marriage that is not permitted by legal regulations in Indonesia, because Indonesia itself uses legal regulations (KUHP) which are a product of Dutch law, which only adheres to monogamy, so those who violate it are contained in Article 279 of the Criminal Code, criminal sanctions are imposed on them. the perpetrator of the marriage is the obstacle. So if a legal wife reports that her husband has remarried without her consent, then this action is said to be an obstructed marriage.

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