

## Legal Consequences and Sanctions for Consanguineous Marriages (Study of Pari City Village, Serdang Bedagai Regency)

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### Abstract

*Consanguineous marriage is a marriage between individuals who are closely related by blood, which is prohibited by law and religion in Indonesia. This study aims to analyze the legal consequences and sanctions for consanguineous marriages, using a case study in Kota Pari Village, Serdang Bedagai Regency. The research method employs an empirical legal approach, utilizing interviews with village officials and an analysis of laws and regulations. The results show that consanguineous marriages are null and void, create complex child status issues, administrative obstacles, and have criminal implications. Sanctions that can be imposed include civil sanctions, a maximum imprisonment of seven years, as well as administrative, social, and customary sanctions. Continuous legal counseling and coordination between institutions are needed for effective prevention.*

**Keywords:** Legal Consequences; Sanctions; Consanguineous Marriage.

### I. INTRODUCTIONS

Marriage is a legal way for humans to establish a happy family and household based on the One Almighty God. Marriage is a sacred and fundamental institution in human life.

Marriage is not merely a physical bond between a man and a woman, but a sacred covenant that carries legal, social, and moral consequences. From a legal perspective, marriage is an agreement because the way to regulate the bond has been regulated in advance, namely through a marriage contract and certain pillars or conditions, and the way to dissolve the bond has also been regulated in advance. In the context of Indonesian law, marriage is comprehensively regulated through Law Number 1 of 1974 concerning Marriage, which has been amended by Law Number 16 of 2019, which affirms that marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the One Almighty God. From an Islamic perspective, as stated in the Compilation of Islamic Law Article 2,

marriage is seen as a very strong contract (*mîsâqan ghalîzan*) to obey Allah's commands and its implementation is an act of worship, with the aim of realizing a household life that is peaceful, loving and compassionate.

The Marriage Law and the Compilation of Islamic Law stipulate that a marriage is valid if formal and material requirements are met. Marriage in Islam is seen as an urgent factor in realizing harmonious relationships between individuals. However, this harmony is believed to be achieved through legal marriage. Although marriage has a noble status, not all forms of marriage are permitted under both state and religious law. One form of marriage that is strictly prohibited is incest, namely marriage between two people who are closely related by blood, such as siblings, parents and children, or uncles and nephews. This prohibition is based on various considerations, including religious aspects, health, and the resulting social impact. In Islam, the prohibition of incestuous marriage is explained in detail in the Quran, Surah

An-Nisa, verse 23, which mentions categories of women who are forbidden to marry due to blood relations, breastfeeding, and marital ties.

From the perspective of modern genetics, consanguineous marriages have been shown to pose very high risks to the health of offspring. Research shows that marriage between two closely related individuals increases the risk of having a child with a rare genetic disease by 1.7-2.8%. Other impacts include increased infertility in both parents and offspring, birth defects such as facial asymmetry, cleft lip, dwarfism, heart problems, some types of cancer, low birth weight, slow growth, and even neonatal death. Studies also show an increased risk of death of approximately 1.2% compared to non-consanguineous marriages, as well as a 4% increased risk of birth defects in children born from consanguineous marriages.

The ongoing phenomenon of consanguineous marriage in several regions of Indonesia, including Pari City, Serdang Bedagai Regency, demonstrates a gap between prevailing legal norms and the reality of community practice. This situation is driven by various factors, including low levels of education, limited access to legal information, strong traditional family ties, and a culture of closed discussion of sexuality and marriage. Communities often lack understanding of the legal consequences and long-term impact of consanguineous marriage, both on the perpetrators and their offspring.

Consanguineous marriage not only violates civil law provisions in the Marriage Law but can also have implications for the criminal law. Article 294 of the Criminal Code stipulates criminal sanctions for sexual relations with blood relatives, especially if it involves coercion or the victim is underage. However, law enforcement in consanguineous marriage cases often faces obstacles, ranging from the difficulty of early detection, public reluctance to report, to the complexity of handling cases involving family relationships.

The role of witnesses in marriage is an important control mechanism to prevent incestuous marriages. Under Islamic law, the presence of at least two righteous male witnesses is a mandatory requirement for marriage. Witnesses not only fulfill formal requirements but also serve as supervisors, ensuring there are no violations during the marriage process, including ensuring there is no mahram relationship between the prospective bride and groom. However, in practice, this role of witnesses is often suboptimal due to various factors, such as witnesses' ignorance of the true relationship between the prospective bride and groom or the manipulation of information.

The social impacts of incestuous marriages are also complex and long-lasting. Families involved in this practice often experience stigmatization and social exclusion. Children born from incestuous relationships are not only at risk of physical and mental health problems but also face social discrimination that can impact their psychological development and life chances. The psychological trauma experienced by victims of incest, particularly in cases involving coercion or abuse of power within the family, can be lifelong and requires intensive professional treatment.

The complexity of consanguineous marriage issues demands a comprehensive approach involving various stakeholders. Village governments, religious leaders, community leaders, educational institutions, and relevant agencies need to work together to prevent and address cases. Legal education is a crucial strategy for raising public awareness about the prohibition and impacts of consanguineous marriage. However, education alone is insufficient without firm and consistent law enforcement and an adequate protection system for victims.

Given these conditions, research into the legal consequences and sanctions for consanguineous marriages is highly relevant and urgent. A comprehensive understanding of the legal consequences of this practice is expected to form the basis for more effective

prevention efforts. Furthermore, clarity regarding the sanctions that can be imposed on perpetrators of consanguineous marriages will have a deterrent effect and increase public compliance with applicable legal norms. A case study in Kota Pari Village, Serdang Bedagai Regency will provide an empirical overview of the reality of this problem at the local level, which can serve as a learning experience for other regions addressing similar issues.

## II. RESEARCH METHODOLOGY

### Legal Aspects of Marriage

Marriage is a family agreement. This family agreement is not an ordinary agreement, but has specific characteristics. Article 28B of the 1945 Constitution of the Republic of Indonesia states that everyone has the right to establish a family and continue their lineage through legal marriage, and the state guarantees children's rights to survival, growth, and development, as well as the right to protection from violence and discrimination.

Marriage is a contract, but the meaning of the contract referred to here is different from the contract as regulated in Book III of the Civil Code (KUHPerdata). Marriage is a contract whose purpose is to bring happiness between the two parties (husband and wife), is not limited to a specific time, and has a religious nature (there is an aspect of worship).

In Arabic *fiqh* literature, marriage is referred to by two words, *nikah* and *zawaj*. These two words are used in the daily lives of Arabs and are frequently found in the Qur'an and the Prophet's sayings. Islamic law stipulates that marriage must be conducted through a contract or legal agreement between the parties, witnessed by two men. According to Islam, marriage is a strong and solid sacred covenant to live together legally between a man and a woman, forming a lasting family, which is characterized by courtesy, support, love, security, peace, happiness, and eternity.

In the Islamic perspective, a marriage is valid as long as it fulfills the

pillars and requirements of marriage, namely the presence of a groom, a bride, a marriage guardian, two witnesses, and the acceptance of the marriage vows (*ijab* and *qabul*). If we examine the definition of marriage according to Law of the Republic of Indonesia No. 1 of 1974, namely "The physical and spiritual bond of a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Almighty God" above, then there are five elements in it, namely:

1. Physical and spiritual ties. Marriage is not merely a physical bond or an emotional bond, but a bond between both. As a physical bond, marriage is a legal relationship between a man and a woman to live together as husband and wife. This physical bond is a formal relationship that is tangible, both for the parties involved and for others and society. This physical bond is established through a marriage ceremony, namely the recitation of the marriage contract for Muslims. As an emotional bond, marriage is a spiritual connection formed by the mutual and sincere desire of a man and a woman to live together as husband and wife. Initially, this emotional bond begins and is marked by the consent of the prospective bride and groom to enter into marriage. Furthermore, in living together, this emotional bond is reflected in the harmony between the husband and wife. The establishment of physical and emotional bonds is the primary foundation for forming and fostering a happy and lasting family.
2. The presence of a man and a woman. The bond of marriage can only occur between a man and a woman, and it cannot occur between any other than a man and a woman. Therefore, R. Soetojo Prawirohamidjojo stated that this element contains the principle of monogamy.
3. As husband and wife. A man and a woman can be considered husband and wife if their bond is based on a legal marriage, provided that both internal and external requirements are met. Internal requirements relate to the parties entering into the marriage, namely: their capacity, agreement, and

the permission of the other party, which must be granted to carry out the marriage. External requirements relate to the formalities of carrying out the marriage.

4. Formn a happy and eternal family (household). To form a happy and lasting family (household). A happy and lasting family is the ideal for both prospective husband and wife. The word "happiness" is abstract and represents the highest peak that both parties aspire to achieve. From the start, there must be a strong desire to live happily, not in hardship. Happiness in both material and immaterial terms is a source of satisfaction within the family home. Happiness can also be seen from economic, social, and other perspectives.

Happiness must also be measured by the individual and collective potential of husband and wife, so that the measure is very relative, but the most common happiness is if the household from beginning to end is sufficient to meet the needs of clothing and food as well as the education of the children, does not experience cracks or shocks that lead to the dissolution of the marriage.

Marriage is eternal, meaning it is expected to last a lifetime unless one of the partners dies. Eternal implies that one should be careful when choosing a future husband or wife, because a husband or wife is not an object to be used for fleeting purposes.

5. Based on the Almighty God. This element points to a very fundamental or basic norm." Belief in the One and Only God is another aspect and distinguishing characteristic of marriage according to the Civil Code. Every Indonesian citizen believes in having a life stance, namely believing in God according to their religion. With the element of God as the foundation of a marriage, it becomes increasingly clear that marriage is not merely a worldly matter but also a religious one.

### III. RESULTS AND DISCUSSION

Consanguineous marriage is a phenomenon strongly opposed in the Indonesian legal system because it conflicts with religious values, social norms, and

public health. To understand the legal implications of consanguineous marriage, it is important to first understand that Indonesian law views marriage as a sacred and protected institution, and any deviation from these rules carries serious legal consequences.

Consanguineous marriage or incest is a marital relationship between people who have close blood relations, such as between father and child, mother and child, brother and sister, uncle and nephew, or other close blood relations that are prohibited by religion and law.

In general, the most fundamental legal consequence of consanguineous marriage is that it is considered invalid and null and void. This means that from the moment the marriage is entered into, the law considers the marriage to have never existed and to have no legal force whatsoever. This differs from an annulable marriage, in which the marriage remains valid until a court decision annuls it. In the case of consanguineous marriage, the invalidity is absolute and cannot be remedied by any means.

Article 1 paragraph (3) of the 1945 Constitution states, "Indonesia is a state of law." The consequence of a state of law is that every state administration and activity carried out in the life of the nation and state must be based on law. This concept of null and void has very broad implications in the lives of couples who have consanguineous marriages. First of all, they are not recognized as legally married husband and wife. This means that all rights and obligations that should be attached to a married couple do not apply to them. They cannot inherit from each other, cannot be guardians or legal representatives of their partners, and do not have rights to joint property as befits a legally married couple. In the context of Indonesian civil law, marriage is regulated in Law Number 1 of 1974 concerning Marriage which has been amended by Law Number 16 of 2019. This law expressly prohibits marriage between people who are related by blood in a direct

or ascending line, blood relations in a lateral line, namely between siblings, between a person and a parent's sibling and between a person and a grandmother's sibling. Violation of this prohibition results in the marriage being null and void by law and cannot be registered at the Office of Religious Affairs or the Civil Registry Office.

Further legal consequences relate to the status of children born from consanguineous marriages. This is the most complex and sensitive aspect because these children are innocent of their parents' actions, yet they must bear severe legal consequences. Under civil law, children born from marriages void by law have a different status than children born from legitimate marriages. Although the law seeks to protect children's rights, in practice, these children often face various administrative and social barriers.

The status of children born of consanguineous marriages in the context of Islamic law in Indonesia is even more complicated. According to Islamic law, a child born of an illegitimate relationship (including consanguineous marriage) is only related to the mother and her mother's family. The child has no relationship with the biological father, meaning he has no right to use his father's name, no right to inherit from his father, and no obligation to provide for the child. This is certainly very detrimental to children who are innocent of their parents' actions.

The administrative impact of consanguineous marriages is also significant. Couples in consanguineous marriages cannot obtain a marriage certificate, a crucial document for family life in Indonesia. Without this document, they face difficulties in various administrative matters, such as obtaining a family card, listing the husband or wife's name on official documents, applying for joint loans, obtaining family insurance, and various other administrative requirements that require proof of a valid marriage. These administrative difficulties continue for

children born of consanguineous marriages. Obtaining a birth certificate can lead to the problem of listing both parents' names. If the parents' marriage is invalid, typically only the mother's name can be included on the birth certificate. This can create social stigma for the child and negatively impact their psychological well-being as an adult. Furthermore, various children's rights, such as the right to education, health care, and social benefits, which often require complete family documentation, can be hindered.

From an inheritance law perspective, the legal consequences of consanguineous marriage are also highly detrimental. Under Islamic inheritance law, which applies to Muslims in Indonesia, children born outside of marriage (including consanguineous marriages) are not entitled to inherit from their biological father. They are only entitled to inherit from their mother and her mother's family. Meanwhile, under civil inheritance law, although it is possible for illegitimate children to inherit through recognition, the process is complicated and often leads to family conflict.

### **Sanctions Against Consanguineous Marriages**

Discussing sanctions against consanguineous marriages requires a comprehensive understanding of the various types of sanctions applicable in the Indonesian legal system. These sanctions are designed not only to punish the perpetrators but also to prevent future consanguineous marriages and protect society from their negative impacts. The applicable sanction system includes civil, criminal, administrative, social, and, in some cases, customary sanctions, which are still recognized.

Based on this, civil sanctions are the most basic sanction in cases of consanguineous marriage. The primary civil sanction is annulment of the marriage itself. However, it is important to understand that in cases of consanguineous marriage, this annulment is automatic because the marriage is null and void. This means that no lawsuit



or court decision is required to annul it, as the marriage was deemed to have never existed from the outset. However, in practice, a court ruling is often necessary to clarify the legal status of the parties, especially if there are children born or assets acquired during the "marriage."

The consequences of an annulling a consanguineous marriage are far-reaching. The parties lose all the rights they would have enjoyed as a married couple. They cannot inherit from each other, have no rights to joint property, and cannot act as each other's legal representatives. If any property was acquired jointly during the "marriage," the settlement will not follow the rules of joint property in marriage, but rather the general civil rules regarding joint ownership, which are far more complicated and often disadvantageous to the economically weaker party.

Criminal sanctions against perpetrators of consanguineous marriage are regulated primarily in Article 294 of the Criminal Code which states that anyone who commits an indecent act with his child, stepchild, adopted child, child under his supervision who is under age, or with a minor whose care, education or protection is entrusted to him or with his servant or subordinate who is under age, is threatened with a maximum prison sentence of seven years. Although this article does not specifically mention consanguineous marriage, sexual relations that occur in the context of consanguineous marriage can be prosecuted under this article.

The application of criminal sanctions in cases of consanguineous marriage presents several challenges. First, these cases often go unreported because they occur within closed family environments. Second, victims are often reluctant to report the crime due to emotional ties with the perpetrator or fear of social stigma. Third, proving the crime is often difficult due to the lack of witnesses and physical evidence. However, if the case is uncovered and proven, the criminal sanctions can be severe,

especially if it involves minors or involves coercion.

In linguistic etymology, the term *Maqasid* means benefit, purpose, principle, intent, goal, intention, and meaning, among other things. In a marriage, the status of a child born is crucial to ensuring that the child's status is legally registered according to applicable regulations, whether the child is legitimate or illegitimate. Administrative sanctions are another highly effective form of sanction in preventing and addressing consanguineous marriages. These sanctions primarily relate to refusals to register marriages by authorized agencies. The Office of Religious Affairs and the Civil Registry Office have the authority and obligation to refuse to register marriages that violate statutory provisions, including consanguineous marriages. Officials who intentionally register consanguineous marriages may be subject to administrative and even criminal sanctions. For perpetrators of consanguineous marriages who are civil servants, TNI, Polri, or public officials, the administrative sanctions that can be imposed are very severe. Based on employee disciplinary regulations, they can be subject to sanctions ranging from written warnings, postponement of promotions, demotions, to dishonorable discharge. These sanctions are based on the consideration that as servants of the state and society, they should be exemplary in complying with applicable laws and norms.

Administrative sanctions also apply to various other aspects of public services. Consanguineous couples face difficulties obtaining various population documents, such as family cards, which state their status as husband and wife. They are also unable to access various government programs aimed at families, such as housing assistance for young couples, family health insurance, and various subsidies that require a valid marital status.

In the Indonesian legal system, there are various sources of national law derived from customary law, Islamic law, and Western law. Social sanctions against

consanguineous marriages are often the most severe and long-lasting. Indonesian society, which still adheres to religious and customary values, generally places a very negative stigma on those involved in consanguineous marriages. These social sanctions can include social exclusion, rejection from various community activities, and even expulsion from the neighborhood. In societies with strong traditional values, consanguineous marriages and their families can suffer losses of social status and honor that are difficult to restore. Even more concerning, these social sanctions often also affect children born of consanguineous marriages. They may face discrimination in school, difficulty making friends, and various forms of bullying. This stigma can persist into adulthood, affecting their opportunities to obtain employment, find a life partner, and fully participate in community life. This demonstrates that social sanctions have a far broader and more lasting effect than other formal sanctions.

In cases involving children, whether as perpetrators or victims, the sanctioning approach emphasizes protection and rehabilitation. Children involved in consanguineous marriages, especially those under age, are viewed more as victims in need of protection than as perpetrators who must be punished. They deserve psychological support, protection from further exploitation, and the opportunity to continue their education and lead a normal life.

The effectiveness of various sanctions against consanguineous marriages depends heavily on several factors. First, public awareness and courage to report cases of consanguineous marriage they become aware of. Second, the sensitivity and professionalism of law enforcement officers in handling these sensitive cases. Third, the availability of support systems for victims, including counseling services, safe houses, and legal aid. Fourth, good coordination between various relevant agencies, such as the police, prosecutors, courts, social services, and child protection agencies.

The challenges in enforcing sanctions against consanguineous marriages also need to be understood. These cases often occur in closed family environments, making them difficult to detect. Victims ultimately become economically or emotionally dependent on the perpetrator, making them reluctant to report. The lengthy and tedious legal process can also lead victims to choose not to pursue their cases. Furthermore, a lack of public understanding of the impact of consanguineous marriages and the legal procedures involved also hinders enforcement of sanctions. In the context of prevention, the application of sanctions must be balanced with extensive public education and outreach efforts. Legal education on the prohibition of consanguineous marriage, its impact on family health and well-being, and the sanctions that can be imposed needs to be carried out continuously. The role of religious leaders, community leaders, and educational institutions is crucial in disseminating this understanding. Mass media and social media can also be utilized in campaigns to prevent consanguineous marriage. Finally, it is important to understand that sanctions against consanguineous marriage are not only about punishing the perpetrators, but also about protecting society, especially future generations, from this harmful practice. A comprehensive, fair, and humane sanctions system is needed to achieve this goal. Sanctions must be implemented by considering various aspects, including protection of victims, rehabilitation of perpetrators, and prevention of recurrence of similar cases. Only with such a holistic approach can the problem of consanguineous marriage be effectively addressed and its negative impacts minimized.

#### IV. CONCLUSION

Based on the results of the research and discussion that has been conducted, it can be concluded that consanguineous marriages have very serious and

comprehensive legal consequences in the Indonesian legal system. The marriage is null and void, resulting in the absence of rights and obligations as husband and wife, children born only have a blood relationship with the mother, administrative difficulties in civil registration, and can have implications for criminal acts under Article 294 of the Criminal Code. The sanctions that can be imposed include civil sanctions in the form of annulment of marriage, criminal sanctions with a maximum prison sentence of seven years, administrative sanctions in the form of refusal of registration and dismissal for civil servants, social sanctions in the form of ostracization from the community, and customary sanctions in certain regions. Enforcement of these sanctions aims not only to punish the perpetrators but also to protect the community, especially children, from the negative impacts of consanguineous marriage.

## V. RECOMMENDATIONS

To effectively address the issue of consanguineous marriage, it is recommended that local governments, along with relevant agencies such as the Office of Religious Affairs (KUA), the Social Services Agency, and child protection agencies, continuously improve legal outreach programs by involving religious and community leaders as agents of change. Furthermore, an early detection system and reporting mechanism that is easily accessible to the public while maintaining confidentiality of the reporter are needed, along with the provision of legal and psychosocial support services for victims. Law enforcement officers also need to be given special training in handling this sensitive case with a humanistic yet firm approach, and there needs to be better coordination between agencies in handling consanguineous marriage cases, from prevention and treatment to victim rehabilitation.

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