

Criminal charges in marriage from the perspective of positive law in Indonesia

(Tuntutan pidana dalam perkawinan dalam perspektif hukum positif di Indonesia)

Anizar

e-mail:anizar@iainlangsa.ac.id

Abstract

Charges of violating family law are one form of reform of marriage law that was never previously regulated. Muslim countries have different legal provisions against charges for violations of this family law. This research uses the literature method and normative juridical approach by examining library data as the source. Primary data sources used in this research are books, laws, court decisions, legal theories and opinions of jurists related to family law charges, and previous studies such as relevant research. This research aims to determine the legal provisions regarding charges for family law violations. The results of the discussion and research explain that not all countries have legal provisions regarding charges in violation of this family law, and the legal provisions regarding these charges vary from one country to another. In general, the legal charges are related to violations of various issues surrounding marriage, such as underage marriage, forced marriage, prevention of marriage permitted by sharia law, prohibited marriage, marriage registration, out-of-court marriage, dowry, marriage expenses, polygamy, divorce, maintenance, treatment of wives, women's rights after divorce, and inheritance rights from spouses and families.

Keywords: criminal charge, marriage, positive law

Abstrak

Sanksi dalam pelanggaran hukum keluarga merupakan salah satu bentuk reformasi hukum perkawinan yang sebelumnya tidak pernah diatur. Di negara-negara muslim memiliki ketentuan hukum yang berbeda-beda terhadap sanksi pelanggaran hukum keluarga ini. Penelitian ini menggunakan metode kepustakaan dan pendekatan yuridis normatif dengan meneliti data-data pustaka sebagai sumbernya. Sumber data primer yang digunakan dalam penelitian ini adalah buku, undang-undang, putusan pengadilan, teori hukum dan pendapat ahli hukum yang berkaitan dengan sanksi hukum keluarga serta penelitian-penelitian terdahulu seperti penelitian yang relevan dengan penelitian ini. Penelitian ini bertujuan untuk mengetahui ketentuan hukum tentang sanksi dalam pelanggaran hukum keluarga. Hasil pembahasan dan penelitian menjelaskan bahwa tidak semua negara memiliki ketentuan hukum mengenai sanksi dalam pelanggaran hukum keluarga ini dan ketentuan hukum mengenai sanksi ini berbeda-beda antara negara yang satu dengan negara lainnya. Secara umum sanksi hukum tersebut terkait dengan pelanggaran berbagai masalah seputar perkawinan, seperti perkawinan di bawah umur, perkawinan secara paksa, pencegahan perkawinan yang dibolehkan hukum syara', perkawinan yang dilarang, pencatatan perkawinan, perkawinan di luar pengadilan, mas kawin, biaya perkawinan, poligami, perceraian, nafkah, perlakuan terhadap istri, hak perempuan pasca cerai, dan hak waris dari pasangan

dan keluarga.

Kata Kunci: Sanksi Pidana, Perkawinan, Hukum Positif

A. INTRODUCTION

Islam constantly regulates all lines of human life so that it can run well and achieve the goals of Islamic law. Islam instructs that in building a household, husband and wife should get along in a good way (*ma'ruf*) and be patient with actions that are not liked so that the relationship between husband and wife can realize a happy marriage.¹ However, living married is not as easy as one might think. There will always be problems that arise. So, to respond to these problems and protect the rights and obligations of family members, it is necessary to reform family law in a country where most of the population is Muslim. Islamic family law reform consists of several forms, including enacting legal sanctions on family law.

This reform is carried out by reviewing several classical Islamic law provisions considered irrelevant to social conditions and modern demands/changes. Conventional fiqh rules that had been referenced for centuries were revisited and replaced with legislation that seemed to be geared towards elevating the status of women and responding to the demands and developments of the times.²

Islamic countries in North Africa, the Middle East, Central Asia and Southeast Asia have made unprecedented changes over the last century by reforming Islamic family law. The reform was carried out in the provisions of formal and material law. In 1917, Turkey was the first country to reform its family law provisions by publishing the "Ottoman Law of Family Rights or Qanun Qarar Al-Huquq Al'Ailah al-'Usmaniyyah".³ Compared to Islamic countries other than Indonesia, several progressive legal provisions show punitive sanctions against family law provisions.⁴

Meanwhile, in Indonesia, no strict and precise sanctions explain the provision of sanctions in family law. The imposition of legal sanctions is one of the characteristics of family law laws in modern Muslim countries. In general, these legal sanctions are related to violations of various issues surrounding marriage, such as underage marriage, forced marriage, prevention of marriage permitted by *shara'* law, prohibited marriage, marriage registration, out-of-court marriage, dowry and marriage expenses, and polygamy. Similarly, there are issues related to divorce, maintenance, treatment of wives, women's rights after divorce, and inheritance rights. In general, the sanctions imposed are still directed at the perpetrators of violations, but in some countries, in addition to the perpetrators,

¹Elimartati. Harapan dan Tantangan Terhadap Pelaksanaan Undang-undang Nomor 23 Tahun 2004 Tentang Penghapusan KDRT. *Agenda*, 1(1), 2017, hlm. 68–90.

²Kadarisman, A. Kekerasan dalam Rumah Tangga dan Sanksinya dalam Hukum Islam. *De Jure: Jurnal Ahukum Dan Syariah*, 9(2), (017, hlm. 88–105.

³Huda, M. Ragam Bangunan Perundang-Undangan Hukum Keluarga di Negara-Negara Muslim Modern: Kajian Tipologis. *Al-Manahij: Jurnal Kajian Hukum Islam*, 11(1), 49–60. <https://doi.org/10.24090/mnh.v11i1.2018>, hlm.1267

⁴Rajafi, A. The Reasoning of Islamic Family Law in Indonesia. Palace Publishing, 2015, p. 13.

penalties are also imposed on supporters, organizers, and even authorized officials related to violations. The sanctions are generally imprisonment/confinement, fines, or both at once.

Based on the problems that arise in society today, it is appropriate for there to be reforms in marriage regulations so that the rules in marriage cases have more strength and people obey the law, especially Muslims. In addition, it also protects marriage and the effectiveness of institutions related to marriage. From the background of the above problems, in this paper, there will be.

B. Criminal Sanctions in Marriage

The word sanction is quoted from the Big Indonesian Dictionary, defined as “dependents (actions, punishments, and so on) to force people to fulfil agreements or obey the provisions of the law (articles of association, associations, and so on)”.⁵ In Arabic, legal sanctions or punishment are known as “*iqab* (singular) and *uqubah* (plural)”.⁶ *Uqubah* in Indonesian is defined as “legal sanctions or punishment”, which in the extensive Indonesian dictionary is defined as “punishment and placed on people who violate laws and other regulations”. The fuqaha also expressed their opinion on this matter, that *uqubah* or punishment is retribution that has been determined for the benefit of society for violating the orders of the sharia maker (Allah and his Messenger)”.⁷ The definition given by the Qanun of Jinayat Procedure (QHAI) is that “*uqubah* is the reward for badness or the sanction for disobedience or crime (*jarimah*).” The fuqaha defines *uqubah* as a reward imposed on the person who has committed a crime for the sin committed as a sanction for him.⁸

Achmad Ali also cites several opinions of experts regarding sanctions. Regarding the definition of sanctions, Paul Bohanan There are several elements in sanctions, namely reactions, consequences and consequences of violations or deviations from social rules (legal and non-legal rules); sanctions are power or power tools to force someone to obey specific social rules and regarding legal sanctions can be divided into public sanctions and private sanctions”.⁹

When sanctions are associated with family law, they are related to problems resulting from violations of family law provisions. In fiqh literature, family law is commonly known as *al-ahwal al-syakhshiyyah*. *Al-ahwal* is the plural form of the word *al-hal*, which means “things”, “affairs”, or “circumstances”, while *al-syakhshiyyah* comes from the word *al-syakhsu* which means “person”, “personal”, or “human” so that *al-syakhshiyyah* means personality or personal identity (identity). The personal matters referred to are matters in which the person is the subject or the laws that control personal matters. On this basis, it can be said that *al-ahwal al-syakhshiyyah* is a personal matter. If the word “qanun” is added in front of the two words to become Qanun al-Ahwal al-Syakhshiyyah, it will mean personal law, which in English is called personal

⁵Depdikbud, T. Big Indonesian Dictionary. Library Hall. 2001.

⁶Syafe'i, Z. Riddah Legal Sanctions and Their Implementation in Indonesia. Hartomo Media Library. 2012.

⁷Mardani. Islamic Criminal Law. Kencana. 2019.

⁸Lubis, Z., & Ritonga, B. Basics of Jinayah Procedural Law. Kencana. 2016.

⁹Ali, A. Revealing the veil of law. Kencana. 2017.

statute or personal law.¹⁰

According to Wahbah Zuhaili, family law or *al-ahwal al-syakhshiyyah* is the laws that regulate family relations from the early days of its establishment to the end or end (family) in the form of marriage, divorce, lineage, living, and inheritance.¹¹ In accordance with the above understanding, the scope of family law itself consists of three kinds of legal subsystems: The scope of family law covers many aspects, not only marriage but other aspects that relate to the relationship between individuals and other individuals in a family.

From the above definition, it can be stated that sanctions in family law are sanctions or punishments for crimes or irregularities in matters related to family law, which aims to maintain benefits for the interests of many people, whether the victim of the crime, his family, the perpetrator himself, or society in general.

C. Criminal Sanctions in Marriage from an Islamic Law Perspective

Sanctions in Islam are known as *uqubah*, defined as “retribution determined for the benefit of the people for violations of shari’a orders”. Islamic law does not differentiate between criminal law and civil law. However, Islamic law distinguishes between punishments that apply in this world and those that apply hereafter. This can be seen from the provisions regarding the obligatory prayer law for *mukallaf*, but if he has reached puberty and does not want to pray even though he has been advised and still does not pray, then the judge has the right to punish him with imprisonment or death.

According to contemporary scholars, as stated by Quraish Shihab, “violations of Islamic law are prohibitions that are not allowed under the threat of hadd or *ta’zir* sanctions. These prohibitions can be in the form of doing something that is prohibited or leaving something that is ordered”. The reason for the prohibition is that it contradicts the objectives of *maqasid shari’ah*, including preserving the soul, preserving the religion, preserving the mind, preserving property and preserving honour.

The fuqaha classify the sanctions of these offences into several divisions, namely, *hudud*, offences whose legal sanctions have been clearly and explicitly explained, and both the type of punishment, the form and the size have been determined by Islamic law. *Qishash-diyat*, namely, offences involving God’s and man’s rights, but man’s rights are more significant than God’s rights. Allah partly determines this provision through the Qur’an and hadith and is partly left to the government’s discretion to determine the law. *Ta’zir* is an offence in the form of disobedience whose punishment is not determined by *shara’*, whether related to the rights of Allah or human rights.¹²

For example, regarding mandatory marriage registration, if a marriage is carried out and not registered, then that person has committed a violation. He is sinful and entitled to sanctions for the violation he committed, even though his marriage is considered religiously valid. The imposition of sanctions is in accordance with the provisions of Islamic law, as the purpose of *sharia* is to

¹⁰Suma, MA Islamic Family Law in the Islamic World. Raja Grafindo Persada. 2004.

¹¹Az-Zuhaili, W. Islamic Fiqh wa Adillatuhu Volume 9. Daruk Fikir. 2011.

¹²Zaki, M. Dynamics of the Introduction of Polygamy Sanctions in the Laws of Modern Muslim Countries. Al-Risala, 14(2), 2014, p. 307–334.

preserve the soul, religion, mind, property and honour. If the government thinks there is a need for rules regarding a new matter that the law has not determined according to the Qur'an and hadith explicitly, then the government is obliged to make a rule to maintain the benefits, including in terms of sanctions for these violations.

D. Criminal Sanctions in Marriage in Islamic Countries

One of the family law reforms in modern Islamic countries is enacting legal sanctions (criminal) in marriage. The departure from classical law, which tends to have no legal sanctions, switches to rules and laws of state products that not only limit and complicate but even prohibit and categorize an issue surrounding family law as an offence and criminal act.

Generally, the legal sanctions applied in family law include marriage, divorce, maintenance and inheritance. To get a clearer picture, the following legal sanctions are contained in these matters in criminal sanctions in marriage.

1. Polygamy

On the issue of polygamy, some Islamic countries pay special attention. Turkey and Tunisia prohibit the practice of polygamy. Egypt, Yemen, Morocco, Pakistan, Malaysia and Indonesia allow polygamy, with relatively strict requirements (complicated). At the same time, regarding polygamy, Qatar and Saudi Arabia are slightly more lenient.¹³ Indonesia does not prohibit the practice of polygamy. However, there are several provisions and requirements that there must be permission from the previous wife and complete other requirements to ensure a fair attitude in polygamy and then submit an application to the Religious Court. However, many people, especially community leaders and religious leaders, are reluctant to go through these procedures and prefer to practice polygamy without being recorded or, more popularly, illegal.¹⁴

Furthermore, when looking at the various favourable laws in Indonesia that regulate illegal polygamy, it can be seen that it is a criminal act. However, the criminal sanctions threatening illegal polygamy can vary depending on which regulation views it.¹⁵ Article 45 of Government Regulation No. 9 of 1975 shows that illegal polygamy is only a *wetsdeliktern* (administrative offence) with the threat of sanctions as high as Rp. 7,500.- (seven thousand five hundred rupiah). Meanwhile, if seen from the perspective of Article 279 of the Criminal Code, the illegal polygamy act will be seen as a *rechtsdeliktern* (minor category criminal offence) with a maximum imprisonment of 5 (five) years, but if the act is based on lies, the maximum penalty is 7 (seven) years:

¹³Kharlie, AT, Hidayat, AS, & Haviz, M. Codification of Contemporary Islamic Family Law. Kencana. 2020.

¹⁴Siregar, MY Criminal Sanctions Against Polygamous Marriages Without the Wife's Consent. Scientific Journal "Advocacy," 05 (01), p. 52–73.

¹⁵Roszi, JP Problems of Implementing Criminal Sanctions in Marriage Against Illegal Polygamy. Al-Istinbath: Journal of Islamic Law, 3(1), 2018, p. 45–66.<https://doi.org/10.29240/jhi.v3i1>, p. 1,419

Concerning legal sanctions on polygamy, Tunisia applies legal sanctions contained in Article 18, which states:

- a. Polygamy is prohibited; any person who marries before the end of his first marriage and remarries shall be liable to imprisonment for one year or a fine of 240,000 francs, or both.
- b. Any person who, having been married, violates the provisions of Law No. 3 of 1957 relating to the civil code and the contract of a second marriage while he is still married shall be subject to the same penalties.
- c. According to unofficial provisions, whoever intentionally marries a person subject to punishment shall be liable to the same punishment.¹⁶

Uzbekistan Criminal Law No. 2012-XII of 1994, Article 126 states polygamy, i.e. living together with at least two women in one house, is punishable by a fine of 100 to 200 times the minimum monthly salary, or community service for up to three years, or imprisonment for up to three years. Tajikistan Criminal Law in Article 170 states that polygamy, marrying two or more women, is punishable by a fine of 200-500 times the minimum monthly salary or community service for up to two years.¹⁷ According to Iran's 1967 Family Law, polygamy committed by a husband without notification (permission) from the wife about the new marital status may subject the perpetrator to a prison sentence of 6 months to 2 years. The same penalty is also imposed on the perpetrators of polygamy.

In Pakistan, a person can only engage in polygamy if he has received written permission from the Arbitration Council (Majelis Hakam). Marriages entered into without such written permission will result in the marriage not being registered under the law.¹⁸ Furthermore, the perpetrator of polygamy without the permission of the arbitration council may be sentenced to:

- a. to pay the entire amount of the dowry immediately, either in cash or instalments, to his existing wives, failing which it may be redeemed as arrears of land tax;
- b. on conviction of a complaint (on the part of the wife regarding dowry payment), the polygamist shall be liable to imprisonment for a term not exceeding one year, or to a fine not exceeding 5000 rupees, or to both.

Malaysian Family Law requires prior written permission from a judge (court) regarding polygamy in Malaysia. Husbands who engage in polygamy that is not in accordance with the law are generally liable to a fine of up to 1000 ringgit or imprisonment of up to six months or both, except Sarawak, which provides for a fine of up to 3000 ringgit or imprisonment of up to two years.¹⁹ From the provisions of the legislation, it can be understood that there

¹⁶Mahmood, T. *Law Countries (Historical, Textual, and Comparative Analysis)*. Academy of Law and Religion New Delhi, 1987.

¹⁷Zaki, M. Dynamics of the Introduction of Polygamy Sanctions in the Laws of Modern Muslim Countries. *Al-Risala*, 14 (2), 2014, p. 307–334.

¹⁸Suchamdi. Heterogeneous Marriage Law Legislation in Modern Muslim Countries. *Kodifikasi*, 7(1), 2013, p. 23–40. <https://doi.org/10.21154/kodifikasia.v7i1.211>

¹⁹Ali, M. Imprisonment for Violations of Marriage Law (Comparative Study between Malaysia, Pakistan, Tunisia and Indonesia). *Islamic Guidance Journal*, 9(4), 2016, p. 703– 730.

is a pluralism of punitive sanctions in the states in Malaysia.

2. Forced Marriage

Malaysia and Iraq are countries that include legal sanctions in their family laws on this issue. Under Malaysian family law, anyone who forces a person to marry outside the permissible grounds of *shara'* law is liable to a fine of up to 1000 ringgit or imprisonment of up to 6 months or both.²⁰ In Iraq, the legal provisions are broken down according to the perpetrator. For example, any person who forcibly marries someone other than the first-line family is liable to imprisonment for a maximum of 3 years and a fine; if the offender is the first-line family, the sentence is imprisoned for a maximum of 3 years without a fine; if the offender is one of the bride and groom, the sentence is imprisoned for a maximum of 10 years or imprisoned for a minimum of 3 years.²¹

3. Marriage Registration and Registration

In Jordan, the bride and groom, the executor and witnesses of an unregistered marriage (without registration with the authorities) are subject to imprisonment under the provisions of the Jordanian Penal Code and a maximum fine of 1000 dinars. The country of Yemen (South) explicitly states that marriage registration affects marriage's validity, so it is not just a mere administrative obligation. Legal sanctions for violators are subject to a maximum fine of 200 dinars or imprisonment for a maximum of 2 years or both against all perpetrators/parties related to the offence (perpetrators & supporters) conducting marriages or registering marriages contrary to Law No.1 / 1974.²²

In Indonesia, sanctions for unregistered marriages are regulated in Chapter IX, article 45 of Government Regulation No. 9 of 1975. The perpetrator was threatened with a maximum penalty of Rp. 7,500. If a person going to marry does not notify the VAT either orally or in writing or does not carry out a marriage contract in front of the VAT and two witnesses, this action is a violation and is punishable by a criminal penalty with a maximum fine of Rp. 7500, 00. The Indonesian state is one of the countries still lax in providing sanctions and has not detailed the sanctions for violations of this family law because there are no clear rules or updates to the old rules.²³

Interestingly, despite not having a majority Muslim population, Sri Lanka has tended to include more criminalization provisions in the Muslim Family Law enacted there. This is reflected in the following provisions:

- a. Making false data on records, books, permits, documents, and copies about marriage and divorce is punishable by imprisonment of max. Three

²⁰Ibrahim, AM Administration of Islamic Law in Malaysia. Malaysian Institute of Islamic Understanding (IKIM).

²¹Mardani. Law ... p.

²²Mudzar, MA Giving... p.

²³Sirin, K. Aspects of Criminalization of Sirri Marriage Laws from the Siyasah Syar'iyah Perspective. Karsa: Islamic Social and Cultural Journal, 20(2), p. 258–275.

years.

- b. They are violating the provisions of Art. 81: The groom; the registrar who neglects or refuses to register his marriage; or neglects/refuses to perform the duty of registering a marriage; Anyone who supports or assists a Muslim man to obtain or influence or register a divorce outside (not in accordance with) the provisions of this law or conspires to violate through other means; Qadi, registrar, and those who participate in violating the rules various in Art. 56 (1) on prohibiting a qadi or registrar from allowing another person to occupy their position and safeguarding all relevant books, documents, files, or Art. 56 (4) on the prohibition, except for the qadi or registrar, of keeping a book, register or record purporting to be a register of a marriage or divorce of Muslims or a record of the proceedings concerning a divorce caused or purported to be caused by another party. Those above will be sentenced for the first time to a fine of up to 100 rupees, while for the second time to a fine of up to 100 rupees or imprisonment for a maximum of 6 months or both (fine and imprisonment).
- c. Registration officers who intentionally record, and others who support or assist in the recording of marriage contrary to the provisions of Articles 22 (marriage during the iddah period), 23 (underage marriage), or 24(4) (polygamy with the permission of the judge) shall be liable to a fine not exceeding 100 rupees; or imprisonment not exceeding six months; or both together.
- d. Any person, not being a qadi (judge), who issues or purports to issue a license or registers a divorce under this act, or who, not being a registrar, registers or purports to register a marriage under this act shall be liable to a fine not exceeding 100 rupees; or to imprisonment not exceeding six months; or to both.
- e. Any party who intentionally or knowingly makes a false statement in a declaration signed by him under Art. 18 (1) (on completion and signing of the marriage registration form by the bride and groom and the girl's guardian) shall be liable to a fine of max. One hundred rupees; or imprisonment of max. Six months, or both together.
- f. Any registration officer: Neglects or refuses without valid reasons to register a marriage, except in the case of Article 11. Registers a marriage held outside his/her jurisdiction. To record a marriage that violates the conditions or limitations contained in his/her duty letter. She was recording a marriage which he/she did not attend. Willfully refusing to perform or relating to the registration of a Marriage: an obligation imposed on him/her by Section 18, 19, or section 58. Willfully violating/defying the various provisions of this act is punishable with a fine of up to 100 rupees.²⁴

4. Court Divorce

²⁴Mudzar, MA Imposing Sanctions for Violations of Laws in Islamic Countries: A Comparative Study of Six Countries. *Dialogue*, 37(1), 2014, p. 87–136.

According to the provisions of the Family Law in Malaysia, the imposition of divorce outside and without the court's permission is subject to a fine of 1000 ringgit, imprisonment for a maximum of 6 months, or both at once. Meanwhile, in Egypt, based on the Law on Personal Status 1929, which is further emphasized in its amendment Law No.100 1985 Article 23 A, a husband who does not register a divorce can be sentenced to imprisonment for up to 6 months or a fine of 200 pounds; or both at once. Similarly, a registrar who refuses or fails to carry out the duty of divorce registration is liable to a maximum imprisonment of 1 month and a minimum fine of 50 Egyptian pounds.²⁵

In Pakistan, divorcing a wife without submitting a written request to the authorized Officer (chairman) or without giving a copy to the wife is punishable by imprisonment for up to 1 year, or a fine of up to 1000 rupees, or both at once. In addition, Jordan imposes penalties under the country's Penal Code on husbands who divorce their wives (out of court) without taking the registration step. In Sri Lanka, making false data on records, books, permits, documents, and copies around divorce is punishable by imprisonment of up to 3 years of marriage outside the court. In Iraq, a man who performs an out-of-court marriage is liable to imprisonment for a minimum of 6 months and a maximum of 1 year; a minimum fine of 300 dinars and a maximum of 1000 dinars. Performing an out-of-court marriage while a previous marriage is ongoing can result in a minimum prison sentence of 3 years and a maximum of 5 years.²⁶

5. Prohibited marriage

If the Family Laws of other Muslim countries tend only to contain several prohibited forms of marriage and stipulate the annulment of these marriages, Somalia and Sri Lanka seem to take a more advanced step by establishing criminalization of violations of this. In Somalia, the perpetrator (male) is the one who Remarries an ex-wife who was divorced by triple *thalaq* before the ex-wife has completed her iddah period from her divorce from another man (husband) and has had a biological relationship with the husband who divorced her, can be sentenced to a maximum prison sentence of 6 months and a maximum fine of 1000.

Regarding this prohibited marriage, Indonesian positive law regulates criminal sanctions for violators of marriage law in Indonesia. Moreover, in the Criminal Code (in the future referred to as the Criminal Code) Article 279 states;

- a. Threatened with a maximum imprisonment of five years:
 - 1) Whoever enters into a marriage knowing that his or her existing marriage or marriages constitute a valid obstacle to that purpose;
 - 2) Whoever enters a marriage knows that the marriage or marriages of another party are an obstacle to that.
- b. If the person who commits an act based on paragraph (1) point 1 conceals

²⁵Huda, M. Variety. ... p. 31.

²⁶Ali, M. Criminal... p.62.

to another party that the existing marriage is a legal obstacle to that, he or she is threatened with imprisonment for a maximum of seven years.²⁷

6. Prohibited marriages

While the Family Laws of other Muslim countries tend to contain several prohibited forms of marriage and stipulate the nullity of such marriages, Somalia and Sri Lanka seem to be taking a step further, criminalizing the violation of these provisions. In Somalia, a man who remarries a divorced ex-wife before she has completed her iddah period from her divorce from another man and has had a biological relationship with the divorced husband can be sentenced to a maximum imprisonment of 6 months and a maximum fine of 1000 Rupiah.

Regarding these prohibited marriages, Indonesian positive law provides for criminal sanctions on violators of Indonesian marriage law. Moreover, the Criminal Code (in the future referred to as KUHP) Article 279 states;

- a. Shall be punished by a maximum imprisonment of five years:
 - 1) Any person who enters into marriage knowing that his existing marriage or marriages constitute a legal barrier to it;
 - 2) Any person who enters into marriage knowing that the marriage or marriages of the other parties constitute a legal obstacle to it.
- b. If the person who commits the act described in paragraph (1) item 1 conceals from the other party that an existing marriage constitutes a legal obstacle, he shall be punished by a maximum imprisonment of seven years.²⁸

Sri Lanka imposes a maximum prison sentence of 3 years on any Muslim man who knows to marry, or has or attempted to obtain (the right) to have sexual intercourse with women whom *shara'* prohibits marriage.” The same penalty applies to any Muslim woman (over 12) who knows to marry or agrees to have sexual intercourse with a man whom Shariah prohibits her from marrying.²⁹ Sri Lankan law also imposes sanctions on any Muslim woman who, during her iddah period, ties the knot or participates as a bride in a marriage ceremony and any person who supports or assists in tying the knot or the performance of the marriage ceremony. Such offenders are liable to a maximum fine of 100 rupees.”

7. Inheritance

Only the Libyan state has specifically paid attention to this issue. “Based on the law in force in Libya, neglecting (not giving) a woman’s inheritance rights can be punishable by imprisonment until the woman’s inheritance rights are granted/fulfilled.”³⁰

8. Wife is Living After Divorce

²⁷Rajafi, A. Reason... p. 26

²⁸Rajafi, A. Reason... p. 26

²⁹Rosyid, M. Criminalization. ... p. 17.

³⁰Mardani Law ... p. 37.

Tunisia seems to be moving on its own on this one issue. According to Tunisian law, husbands who avoid the obligation to provide maintenance or compensation for one month can be subject to legal action.³¹

From the information above, we can conclude that in family law in several countries, legal sanctions have been implemented, both imprisonment and fines. Some countries even impose social work sanctions. Legal sanctions include the issue of polygamy, divorce before the court, marriages must be registered for the wife's maintenance and so on. Legal sanctions are provided to cover legal gaps or strengthen the law itself without abandoning the rules in Islam.

Legal reform in family law is carried out so that there is codification and unification of law due to several schools of thought in one country. Reforms were carried out to elevate the status of women. The updates are carried out to respond to current developments because classical jurisprudence is no longer relevant.

E. Conclusion

Family law sanctions or punishment for crimes or abuses in matters related to family law, which aims to safeguard the interests of many people, whether the crime victim, their family, the perpetrator himself, or society in general. These legal sanctions are generally related to violations of various issues surrounding marriage, such as underage marriages, forced marriages, prevention of marriages permitted by sharia law, prohibited marriages, registration of marriages, marriages outside the court, dowry and marriage expenses, and polygamy.

Likewise, regarding divorce issues, maintenance, treatment of wives, women's rights after divorce, and inheritance rights. In general, the sanctions imposed are still directed at the perpetrator of the violation, but in several countries, apart from the perpetrator, punishment is also imposed on supporters, organizers, and even authorized officers involved in the violation. The sanctions are generally in imprisonment/imprisonment, acceptable, or both at once.

BIBLIOGRAPHY

Ali, A. *Menguak tabir Hukum*. Kencana. 2017.

_____. Pidana Kurungan Bagi Pelanggaran Hukum Perkawinan (Studi Perbandingan antara Malaysia, Pakistan, Tunisia dan Indonesia). *Jurnal Bimas Islam*, 9(4), 2016.

Az-Zuhaili, W. *Fiqh Islam wa Adillatuhu Jilid 9*. Darul Fikr. 2011.

Depdikbud, T. *Kamus Besar Bahasa Indonesia*. Balai Pustaka. 2001.

Elimartati. Harapan dan Tantangan Terhadap Pelaksanaan Undang-undang Nomor 23 Tahun 2004 Tentang Penghapusan KDRT. *Agenda*, 1(1), 2017.

Huda, M. *Ragam Bangunan Perundang-Undangan Hukum Keluarga di Negara-Negara Muslim Modern: Kajian Tipologis*. *Al-Manahij: Jurnal Kajian*

³¹Kharlie, AT, Hidayat, AS, & Haviz, M. Codification ... p. 47

- Hukum Islam*, 11(1), 49–60. <https://doi.org/10.24090/mnh.v11i1>. (2018)
- Ibrahim, A. M. *Pentadbiran Undang-undang Islam di Malaysia*. Institut Kefahaman Islam Malaysia (IKIM), 1997.
- Kadarisman, A. Kekerasan dalam Rumah Tangga dan Sanksinya dalam Hukum Islam. *De Jure: Jurnal Ahukum dan Syariah*, 9 (2), 2017
- Kharlie, A. T., Hidayat, A. S., & Haviz, M. *Kodifikasi Hukum Keluarga Islam Kontemporer*. Kencana. 2020.
- Lubis, Z., & Ritonga, B. *Dasar-dasar Hukum Acara Jinayah*. Kencana. 2016.
- Mahmood, T. *Law Countries (Historis, Texts, and Comparative Analysis)*. Academy of Law and Religion New Delhi, 1987.
- Mardani. *Hukum Pidana Islam*. Kencana. 2019.
- Mudzar, M. A. Pemberian Sanksi Atas Pelanggaran Undang-undang di Negaranegara Islam: Kajian Perbandingan Enam Negara. *Dialog*, 37(1), 2014.
- Rajafi, A. *Nalar Hukum Keluarga Islam di Indonesia*. Istana Publishing. 2015.
- Rosyid, M. Kriminalisasi Terhadap Hukum Keluarga di Dunia Muslim. *Al Amin: Jurnal Kajian Ilmu dan Budaya Islam*, 3 (1), 2020.
- Roszi, J. P. Problematika Penerapan Sanksi Pidana dalam Perkawinan Terhadap Poligami Ilegal. *Al-Istinbath: Jurnal Hukum Islam*, 3(1), <https://doi.org/10.29240/jhi.v3i1>. 2018.
- Siregar, M. Y. Sanksi Pidana Terhadap Perkawinan Poligami Tanpa Adanya Persetujuan Istri. *Jurnal Ilmiah "Advokasi,"* 05(01), 2017.
- Sirin, K. Aspek Pemidanaan Hukum Perkawinan Sirri dalam Perspektif Siyash Syar'iyah. *Karsa: Jurnal Sosial Dan Budaya Keislaman*, 20 (2).
- Suchamdi. Heterogeneous Perundang-Undangan Hukum Perkawinan Negara-Negara Muslim Modern. *Kodifikasia*, 7 (1). 2013. <https://doi.org/10.21154/kodifikasia.v7i1>
- Suma, M. A. *Hukum Keluarga Islam di Dunia Islam*. Raja Grafindo Persada. 2004.
- Syafe'i, Z. *Sanksi Hukum Riddah dan Implementasinya di Indonesia*. Hartomo Media Pustaka. 2012.
- Zaki, M. *Dinamika Introduksi Sanksi Poligami dalam Hukum Negara Muslim Modern*. *Al-Risalah*, 14 (2), 2014.