

APPLICATION OF THE PROVISIONS OF ARTICLE 279 OF THE CRIMINAL LAW (KUHP) CONCERNING CRIMES AGAINST THE ORIGINS OF MARRIAGE IN CASES OF MARRIAGE UNDER THE HANDS WITHOUT THE PERMISSION OF THE FIRST WIFE

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Abstract

Nowadays, most husbands who practice polygamy do not use the mechanism of applying for permission from the court and, even more sadly, do not have permission to carry out the marriage from the wife of their first marriage, then secretly marry again by means of an unregistered marriage. Therefore, it is very interesting and important to study further regarding whether a private marriage without the permission of the first wife can be qualified as a criminal offense under Article 279 of the Criminal Code? and what is the criminal liability for perpetrators of underhanded marriages without the permission of the first wife based on the provisions of Article 279 of the Criminal Code? To answer these problems, normative juridical legal research methods are used with statutory and conceptual regulatory approaches. Data obtained from primary, secondary and tertiary legal material sources were collected and then analyzed using qualitative data analysis techniques. From the research results, it was found that religiously, cases of unregistered polygamy without the permission of the legal wife are considered as marriages that violate religious goals and commands, in accordance with the postulates in the state's positive law, unregistered polygamy without the permission of the legal wife is classified as a marriage that violates the rules of state law, and violating several statutory provisions starting from Articles 279 and 280 of the Criminal Code (Criminal Code) concerning polygamy without court permission, automatically a previous valid marriage becomes a barrier to polygamy. (threatened to 5 years in prison. Offense of complaint under Article 284 of the Criminal Code (Criminal Code) concerning adultery (everspel/sexual intercourse without the permission of the legal wife). (threatened to 9 months in prison).

Keywords : Article 279 of the Criminal Code, Marriage Crimes

Abstract

Nowadays , mostly husband did it polygamy , no use mechanism submission permission in Court and more it's sad Again No own permission For do marriage the from wife marriage first , then secretly do marriage Again with how to have an unregistered marriage . Therefore very interesting and important For study more carry on about is marriage below hand without permission wife First can qualified as follow criminal law Article 279 of the Criminal Code ? and how accountability criminal for perpetrator marriage below hand without permission wife First based on provisions of Article 279 of the Criminal Code ? For answer problem mentioned , is used method study law juridical normative with method approach regulation statutory and conceptual . Data obtained from source material primary, secondary and tertiary law collected later analyzed with technique qualitative data analysis . From the results study obtained that Religiously the case polygamy series without permission wife legitimate priceless as wrongful marriage religious goals and commandments , accordingly with postulates in law positive state, polygamy series without permission wife legitimate classified as wrongful marriage rule state law , as well violate a number of provision legislation start from Articles 279 and 280 of the Criminal Code (Criminal Code) concerning polygamy without permission court automatic wedding legitimate previously become barrier For polygamous . (threatened to 5 years prison . Offense complaint Article 284 of the Criminal Code (Criminal Code) concerning adultery (everspel / sexual intercourse outside permission wife valid). (threatened to 9 months prison).

Keywords : Article 279 of the Criminal Code, Criminal Marriage

INTRODUCTION

Marriage or what is also called marriage is a human instinct since the existence of humans themselves to fulfill their life needs by carrying out biological relationships in family life. Therefore, every normal and mature human being will definitely desire marriage. However,

carrying out a marriage cannot be done haphazardly because human marriage has procedures and rules that have been determined by law, both in Islamic law and positive law.

Marriage is a sacred bond because marriage is not just an external or physical bond, but also an inner bond that is based on God Almighty. This means that marriage is not just an external relationship, but rather a bond between a man and a woman, namely an inner and outer relationship which aims to create a happy and eternal family based on faith in God Almighty. This is in accordance with Article 1 of the Marriage Law Number 1 of 1974 of the Republic of Indonesia. Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to the Marriage Law Number 1 of 1974.

Before the enactment of Law of the Republic of Indonesia Number 1 of 1974, marriage already existed. Law Number 16 of 2019 of the Republic of Indonesia concerning Amendments to the 1974 Marriage Law applies to various marriage provisions. During the Dutch colonial period, marriage law was regulated in Book One of the Civil Code (Burgerlijk Wetboek (BW)), followed by the provisions of the Indonesian Christian Marriage Ordinance (Huwelijk Ordonantie Christen Indonesiers Staatsblad 1933, Number 74 (HOCI)). The Inter-Marriage Regulations (Regeling op de Gemengde Huwelijken Staatsblad 1898 Number 158 (GHR)) in the Dutch East Indies had divisions into population groups, so that they were applied to 131 people. 163 Indische Staatsregeling (IS) and uses different marriage laws.

During the Dutch colonial period, the pluralism of marriage law was very clear, different provisions were applied simultaneously, and in the case of indigenous peoples, the Dutch government allowed the use of existing laws. Then in 1974, the Indonesian government attempted to end the era of legal pluralism in Indonesia. With the promulgation of Marriage Law Number 1 of 1974 of the Republic of Indonesia. Law Number 16 of 2019 concerning Amendments to the 1974 Marriage Law.

This has been confirmed in Law Number 1 of the Republic of Indonesia of 1974. Law Number 16 of 2019 of the Republic of Indonesia which states: "Concerning marriage and all marriages based on this law, at the time this law comes into force, the law, the Civil Code (Burgerlijk Wetboek), the Indonesian Christian Marriage Law () Huwelijks Ordonantie Christen Indonesiers Staatsblad 1933, number 74), mixed marriage regulations (Regeling op de gemengde Huwelijken Staatsblad 1898, number 158) and other provisions other maritime provisions specified in this law. the law is declared invalid."

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In this regard, we often hear the term "unregistered marriage" or "unregistered marriage" in public life. If a private marriage is not registered with the Religious Service (KUA) or the Population Register.

This trend of unregistered marriages is increasingly being used by many parties, from artists, civil servants, bureaucrats to the general public. Siri's marriage has become a topic of debate among Indonesian intellectuals, clerics and even the police. If there are differences of opinion regarding marriage. Siri marriage is very different from legal positive marriage in Indonesia. Siri marriages are carried out for several reasons.

The phenomenon of unregistered marriage has become an open secret, various parties have made unregistered marriage a powerful weapon to fulfill their desires and interests. Many unregistered marriages take the shortcut of unregistered marriage, which is often used by people who are still married to enter into a second or third marriage or polygamy and hide from their previous marriage.

Law of the Republic of Indonesia Number 1 of 1974 basically allows a man to have more than one wife or polygamy because Law of the Republic of Indonesia Number 1 of 1974 adheres to the principle of relative monogamy. According to Law Number 1 of the Republic of Indonesia of 1974, the court can allow a man to have more than one wife if the parties wish. According to Law Number 1 of the Republic of Indonesia of 1974, a man has the right to marry more than one wife if the woman is unable to bear or give birth to children, or the woman has a dangerous disease that can be transmitted. or physical. with disabilities: The following factors can be reasons why men remarry.

Husbands who wish to remarry must submit an application to the Court. Apart from that, there must be the wife's consent, there must be certainty that the husband guarantees the living needs of his wife and their children and, the husband will treat his wife and their children fairly. However, in reality a husband no longer follows the rules set by law. The marriage.

Permission from the first wife does not seem to be something that is considered important in the practice of unregistered marriage. Even though this permission is important, a husband cannot immediately remarry without considering the status of a wife. This becomes an increasingly complicated problem. Usually a wife who is being polygamous by her husband tends to remain silent even though she already knows that her husband has violated her rights as a wife, but there are also several cases of unregistered marriages that are disputed at the court or court.

Several cases of unregistered marriages, namely: The case in Polewali Mandar, West Sulawesi, a couple of people in unregistered marriages, Sappe alias Andri Hamzah (32 years) and Rasdiana (31), were charged with violating Article 279 paragraph 1 of the Criminal Code with the threat of a sentence of seven years in prison for marrying secretly. silent while both of them still have legal partners. In the trial with the agenda of reading the indictment at the Polewali Mandar District Court, West Sulawesi this afternoon, the public prosecutor revealed that the two of them underwent an unregistered marriage on November 13 2009 in Landi Pokki Hamlet, Baru Village, Luyo District, Polewali Mandar. The two of them married in a series for reasons of mutual love. This couple's unregistered marriage went to court because it was reported by Rasdiana's husband,

Baharuddin (32). He reported it because Rasdiana had remarried another man even though she had not divorced him, even though they had separated. Rasdiana married Sappe for the second time in a series without permission from the religious court. During the trial, the two defendants, an unregistered married couple, were charged by the Polewali Mandar District Attorney, M. Ahsan Thamrin, with the same article of the Criminal Code but with different points. The defendant Sappe was charged with Article 279 paragraph (1) 1c of the Criminal Code, and the defendant Rasdiana with Article 279 paragraph (1) 2c of the Criminal Code.

Another case of serial marriage carried out by OS and ED. Where OS is the initial for the Head of Girimukti Village, Bojonegara District, Tasikmalaya Regency, ED is the village official. Both of them are strongly suspected of having violated Article 279 of the Criminal Code regarding obstructed marriage which is punishable by a maximum prison sentence of five years. "The legal process is rolling out step by step, and on Monday (06/09/2021) we learned that the police had summoned ED and OS again to face the law with suspect status and on suspicion of having committed this unlawful act, both of them since that day. Tuesday (07/09) 2021) had to stay overnight at the Tasikmalaya Police 'Prodeo Hotel' to undergo the legal process. The summoning of OS and ED as suspects is a long tail of the alleged crime of Article 279 of the Criminal Code regarding obstructed marriage. Where the two of them (OS and ED-ed) had married under the hand of DM who was policed as ED's legal wife some time ago.

Several unregistered marriages that went to court ended with different decisions. Quoting Chairul Huda's opinion regarding unregistered marriage and polygamy, he said that the application of the articles on polygamy and unregistered marriage was inconsistent. This view of the resolution of unregistered marriage cases also looks at the opinion of the marriage judge himself.

RESEARCH METHODS

Types of research This is study law juridical normative . Study juridical normative is type research that examines studies document . Object study in study juridical normative is on the law that is conceptualized as the norm or rule . The norm has become object the study covers Laws , regulations government , and others. In research This used a number of approach namely : Legislative Approach , Approach Concept , Approach Historical , and Case Approach . Based on this type of research, library research, data collection is through research books, journals, and theses related to theses and discussing research objects. In this research, primary data sources and secondary data sources are used . Data collection is nothing more than a data procurement process for needs study . As for technique data collection carried out in study This is type study References so that source obtained written , for book or references used by the author This will studied in a way critical use method quote direct and quotation No direct .

RESULTS AND DISCUSSION

A. Marriage Under Hand Without Permission Wife First Can Qualified As Act Criminal Article 279 of the Criminal Code

1. Proof Case Criminal To A Husband Does Marriage For Second This time Without permission from the wife First

Proof is a process of proving and convincing the judge about truth incident with use evidence regulated by law , as has been explained in chapter previously that proof of what happened in something the judge thing , fine case criminal , civil , state administration or in the judge religious courts , occupy position important from the way Justice or the judge . Judge inside drop decision or verdict will always guided to results proof .

According to WJS Poerwadarminta who provided understanding proof , proven and proof say that :

- a. "Evidence is something enough things (events and so on). For show truth something things (events and so on);
- b. Evidence , goods evidence is whatever happens mark something act (crime and so on ;
- c. Proof is acts (things and so on) of proof . "In the process of proof , there are a number of system purposeful proof For know method put results proof to moderate matter checked . Regarding the proof system This will explained furthermore . Apart from that , the author will also elaborate tools proof as well as strength proof from each tool proof in the process of being resolved case criminal .
- d. Prove have understanding , giving (showing) evidence ; and Signifies, states (that something Correct)".

Proof is outlining provisions ways proof something legitimate event in a way law and provide guidelines . Evidence is also a form of evidence governing provisions about tool evidence permitted by law that can used by judges for prove truth something incident . According to R. Supomo, evidence has two meanings , namely understanding broad and understanding limited . The broad meaning is for prove exists connection law , for example when the judge accepts lawsuit plaintiff . Confession This contain meaning that the judge will conclude that what is required plaintiff as connection law between plaintiff and defendant is Correct . Therefore that 's proof in a broad sense means strengthen the judge's findings with terms valid evidence . In a limited sense , proof only required if demands plaintiff submitted by the defendant . Who does not denied No need proven .

Act criminal also commonly called offense Where originate from Language Latin delicta or delictum, deep known with Name strafbaar feit , said strafbaar feit by experts law translated in various term with different formulations too . Strafbaar feit in a number of SR Sianturi terms among others:

- a. Actions criminal
- b. Incident criminal
- c. Actions that can be done punished
- d. Act criminal

Action term criminal can explained from a number of opinion , Action criminal according to Moeljatno is " Acts that are prohibited by something rule law which prohibitions are accompanied threats (sanctions) in the form of certain , share goods who violated it prohibition the . It can also be said that deed criminal is an action by someone law prohibited and threatened criminal .

Importance proof in a way formal about formulation formulation something rule follow criminal , in essence trial procedural law This look for something truth material For emphasize it

. System evidence that is adopted and regulated in the Criminal Procedure Code (KUHAP) it is found in Article 183 where the emphasis is must there is proof according to ways and tools valid evidence . In Article 183 of the Criminal Procedure Code (KUHAP) . explained that the Judge did not can drop criminal to a except if with at least two tools valid evidence He obtain confidence that something follow criminal truly happened and that the defendant is guilty do it .

Proof is one of tasks and efforts as well as action prosecutor prosecutor general as one of the pillars and institutions enforcer law , prosecutor prosecutor general have task as prosecutor in matter case follow criminal , which is in task the prosecution the prosecutor must behave and act professionally . Prosecution and trial process court , prosecutor required prove truth from action or deed the crime charged to perpetrator follow criminal (defendant) , which in support indictment the Of course just prosecutor prosecutor general must equipped and done own various tool proof . Constitution Number 1 of 1974 which regulates about marriage , explained that Constitution marriage This adhere to principle meaningful monogamy a husband only allowed own wife one person. However thereby marriage a husband can done or married Again if desired by the parties concerned with fulfil condition certain conditions and permits decided by the court .

This matter arranged in article 9 of the Law Marriage : Someone who still is bound rope marriage with others not can marry again , except in things mentioned in article 3 paragraph (2) and article 4 of the law This . Then by Regulation Government about implementation Constitution Marriage arrange in a way specifically in Chapter VIII about " Beristeiri more from someone " ie articles 40 to with article 44 and regulates about penalty criminal in relationship with somebody married more from one person in Chapter IX article 45.

Based on instruction Supreme Court mentioned above so Article 279 of the Criminal Code (KUHP) applies to a married husband again and no get permission from court . Before enforced Constitution Marriage In 1974, article 279 of the Criminal Code (KUHP) . No can treated to a husband did it polygamy because Islamic Religious Law allows it a husband have wife four people in time simultaneously . When That article 279 of the new Criminal Code can treated to a husband (who is Muslim if have wife more from four people).

Another case of marriage series conducted by OS and ED. Where OS initials for the Head of Girimukti Village Subdistrict Bojunggambir Regency Tasikmalaya , ED is device his village . Both of them allegedly strong Already violate article 279 of the Criminal Code concerning wedding hindered by being threatened criminal imprisonment for a maximum of five years . " Legal proceedings it rolled step by step , and last Monday (06/09/2021) . We know police has call back ED and OS for face to face with law with suspect status and above conjecture has do deed oppose law it 's both since Tuesday (07/09) 2021) must staying at the Police 'Prodeo Hotel' Tasikmalaya For undergo legal proceedings . Calling OS and ED as suspect intended tail long on conjecture follow criminal article 279 of the Criminal Code concerning wedding hindered . Where both (OS and ED-ed) have do wedding under hand policed by the DM as wife legitimate ED hose a number of time ago .

2. Element Stage Marriage Whereas Know That Marriage Or Marriages Become A Legal Obstruction

Marriage That legitimate if done according to their respective religions and beliefs , and new can said powerful law if has recorded with the employee marriage registrar . Marriage only can proven with marriage certificate made by an employee marriage registrar . General Explanation in number 4 letter b of Law no. 1 of 1974 concerning principles or principle about marriage stated in the Law This stated that something marriage is legitimate when done according to law each his religion and beliefs that and on the side That each marriage must noted according to regulation current regulation . Recording each marriage is The same case with recording events important in life someone , for example birth , declared death in letters description , a the deed is also included in the registration list .

In Article 279 Paragraph (2) of the Criminal Code state Whoever stage marriage whereas know that marriage marriages the other party becomes barrier For That can threatened with criminal imprisonment for a maximum of five years . However , art the can ruled out as stated in Article 3 paragraph (2) of the Law Marriage , one husband can married more from a if court can give permission to a husband For married more from someone , if desired by the parties concerned .

According to opinion writer marriage below hand without exists permission from wife at marriage previous valid , no in accordance with formulation of Article 279 paragraph (1) point 1 of the Criminal Code. Element the marriage referred to in article the refers to meaning legal marriage according to provision law positive in Indonesia, namely Constitution Jo's marriage . Regulation Republic of Indonesia Government Number 9 of 1975 jo. Compilation of Islamic Law (Inpres Number 1 of 1991). And writer opinion If connected with Article 279 of the Criminal Code Act criminal marriage without permission wife First in the Criminal Code regulated in Article 279 concerning crime to origin wedding .

B. Accountability Punishment for perpetrators Marriage Under Hand Without Permission Wife First Based on Provisions of Article 279 of the Criminal Code

1. Crime To Marriage in the Criminal Code (KUHP)

The Criminal Code (KUHP) also regulates registered marriage in Chapter XIII about Crime On Origins and Marriage . the chapter consists from four chapter namely 277, 278, 279, and 280. Prohibition marriage with legal barrier in a way special arranged in Article 279 of the Criminal Code which states :

- 1) Threatened with criminal maximum imprisonment of five years :
 - a. goods Who stage marriage whereas know that marriage or his previous marriages There is become legal barrier For That ;
 - b. goods Who stage marriage whereas know that marriage or marriages the other party becomes barrier For That .
- 2) If that does deed based on paragraph 1 point 1 hides to the other party that existing marriage There is become legal barrier For That threatened with criminal a maximum of seven years in prison year .
- 3) Revocation right based on article no. 1 - 5 can be stated .

Based on chapter the somebody can convicted when one party do something marriage Again whereas hindered by marriage previously . Blocked interpreted as indicators that cause

marriage Then become No can done . Criminal with weighting done when the person does it marriage again , though Still hindered by a previous marriage but hide matter the to partner later married .

2. Sentencing To Perpetrator Marriage Under Hand Without Permission Wife First

In the description above has stated that the marriage took place Defendant the No recorded by employees marriage registrar , so although marriage the legitimate according to religion, but No powerful law . Marriages performed below hand it's not intended marriage in Article 279 paragraph (1) point 1 of the Criminal Code because such a marriage No recognized by state/ national law (law positive).

Something interesting thing when speak about punishment to perpetrator marriage below hand without permission wife First . Wife first intended that is legal wife from perpetrator , who is married according to provisions of Article 2 paragraph (1) and paragraph (2) of the Law Marriage .

If reviewed from corner law criminal , because marriage below hand No recognized in a way state/ national law (law positive), so marriage the considered No There is . Article 7 of the Compilation of Islamic Law states that :

- a. Marriage only can proven with Marriage Certificate made by the employee Marriage Registrar .
- b. In terms of marriage No can proven with Marriage Certificate , yes submitted itsbat his marriage to religious courts

Therefore that , if perpetrator Still bound marriage with another, and then do marriage Again below hand with the others , then the most appropriate article For applied namely Article 284 paragraph (1) of the Criminal Code which states :

(1) Threatened with criminal a maximum of nine years in prison month :

1a. a man who has married who did overspel , even though is known that article 27 BW applies for him ,

1b. a women who have married who did not bad , though is known that article 27 BW applies for him .

2a. a the man who came along as well as do deed that , though he knows that's what comes along guilty has marry ;

2b. a person women who have get married too as well as do act that , though known by him that also guilty already married and article 27 BW applies for him .

If referring to Article 284 paragraph (1) of the Criminal Code then more appropriate said If marriage sort of That is adultery . According to R Soesilo , adultery is sexual intercourse carried out by men or women who have marry with Woman or man yan No wife or her husband . So come in chapter this , then intercourse That must done with Like The same like it , no can There is coercion from one party . Furthermore said that intercourse is contest between member genitals ordinary men and women executed For get child .

Still men own bond legal marriage and then do marriage below hand , though has he knows that defendant Still bound with marriage The previous one is valid , so it is very correct For Article

284 applies . the article refers to men who have own legal wife according to law , then do adultery with other women who are not his wife . Legal wife according to law namely those that are subject to Article 27 of the Civil Code before enactment Republic of Indonesia Law Number 1 of 1974 concerning Marriage .

Within the framework this , Before birth Republic of Indonesia Law Number 1 of 1974 is used Book I of the Civil Code (Burgerlijk Wetboek) article 27 and article 50.

Article 27 states At the same time a man only allowed have one woman as his wife , one Woman only One man as her husband . Article 50 states Everyone who wants to get married , you have to tell will That to employee notes civil place just one left from second party .

However , the provisions of Article 27 of the Civil Code the revoked with presence Republic of Indonesia Law Number 1 of 1974 so that Article 284 paragraph (1) point 1 letter a refers to provision Constitution Marriage . This matter based on principles enforceability the law states that the lex posterior derogat legi priori. That means more laws new (applicable then) aside Constitution previous (previous) along arrange the same object . Therefore that , Article 284 of the Criminal Code must follow provision Constitution Marriage .

important thing is that it's not can ruled out that follow the crime mentioned in Article 284 of the Criminal Code is offense complaint absolute (absolute). That means , act criminal the only can sued if There is complaint from husband or wife who feels disadvantaged . Throughout No There is complaint from the person concerned , such a matter No can brought before the court the judge .

A secret marriage carried out by the husband , which is carried out without agreement as legal wife according to religious law and state law , namely something potential action become A problem law . As wife legitimate own right For go through effort law in a way criminal with make Police Report against husband , above conjecture violates Article 279 paragraph (1) 1 of the Criminal Code, which states that goods Who stage wedding whereas know that wedding or marriage or his previous marriages There is become legal barrier For that , threatened with criminal maximum imprisonment of 5 years .

Related application of Article 279 of the Criminal Code emphasized with there is a Circular Letter Supreme Court of the Republic of Indonesia Number 4 of 2016, which stated that marriage entered into by one person husband with other women , meanwhile husband the No get permission wife For carry out marriage again , then Article 279 of the Criminal Code can applied . Apart from that , deeds husband may also be charged conjecture follow criminal violates Article 280 of the Criminal Code, which states goods Who stage marriage , though on purpose No telling you to the other party that There is lawful obstruction , threatened with criminal imprisonment for a maximum of five years , if Then based on barrier that is , marriage Then stated No valid .

Wife is also possible For go through effort law with make Police report above conjecture violates Article 284 paragraph (1) 1a of the Criminal Code, which states that a man who has marry , who does mistress or adultery (overspel), even though is known that Article 27 BW applies for him , threatened with criminal a maximum of nine years in prison month .

CONCLUSION

From the results and discussion , it can be seen withdrawn conclusion as following :

1. Unregistered marriages can be punished in accordance with Article 279 Paragraph (1) of the Criminal Code state marriage or his marriages become legal barrier For That can threatened with criminal imprisonment for a maximum of five years .
2. Polygamy case series without permission wife legitimate including as wrongful case rule religious and state law . Religiously the case polygamy series without permission wife legitimate priceless as wrongful marriage religious goals and commandments , accordingly with postulates in law positive state, polygamy series without permission wife legitimate classified as wrongful marriage rule state law , as well violate a number of provision legislation start from Articles 279 and 280 of the Criminal Code (Criminal Code) concerning polygamy without permission court automatic wedding legitimate previously become barrier For polygamous . (threatened to 5 years prison). Article 284 of the Criminal Code (Book of Laws Criminal Law) about adultery (osperpel / sexual intercourse outside permission wife valid). (threatened to 9 months prison).

SUGGESTION

1. Should public follow participate in eradicate case polygamy / marriage siri , with method report , prevent , as well give education to each other , so that it is deep life social the more going to tranquility , and peace , as well decreasing number violence in House stairs , neglect House ladder and case other .
2. For couples (prospective husband wife) who wants to carry out wedding , preferably make agreement pre -wedding, so you can reduce no risk desired after bound wedding . Like example make agreement pre -nuptial prohibition his partner For polygamous , with agreed consequences . For couples whose wedding Still with method Siri , hurry up For do marriage isbat (application legalization of the proposed marriage to Court For stated it's legal marriage and having strength law .

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