

DOI: <https://doi.org/10.38035/sijal.v4i2><https://creativecommons.org/licenses/by/4.0/>

Received: 13-09-2026 | Revised: 02-10-2026 | Accepted: 10-10-2026

## Juridical Analysis of the Validity of Second Marriages and Criminal Liability for Perpetrators of Second Marriages Without Permission in Indonesian Positive Law

Rivaldo Sibagariang<sup>1</sup>, Diding Rahmat<sup>2</sup>, Mhd Halkis<sup>3</sup>

<sup>1</sup>Universitas Dirgantara Marsekal Suryadarma, Jakarta, Indonesia, [rivaldosbgr13@gmail.com](mailto:rivaldosbgr13@gmail.com)

<sup>2</sup>Universitas Dirgantara Marsekal Suryadarma, Jakarta, Indonesia, [didingrahmat@uniku.ac.id](mailto:didingrahmat@uniku.ac.id)

<sup>3</sup>Universitas Dirgantara Marsekal Suryadarma, Jakarta, Indonesia, [halkis@unsurya.ac.id](mailto:halkis@unsurya.ac.id)

Corresponding Author: [rivaldosbgr13@gmail.com](mailto:rivaldosbgr13@gmail.com)<sup>1</sup>

**Abstract:** Under Indonesian positive law, a second marriage is essentially permitted on a limited basis, provided that the requirements stipulated by legislation are met. However, instances of second marriages entered into without court authorization or the first wife's consent—whether through unregistered (siri) marriages or by providing false information—remain frequent; this creates legal uncertainty and carries the potential for criminal liability. This study aims to analyze the legal framework governing the validity of second marriages in Indonesia and the criminal liability of those who enter into invalid second marriages. A normative legal research method was employed, utilizing statutory, conceptual, and case-based approaches. The findings indicate that the regulation of second marriages in Indonesia adheres to the principle of "open monogamy," allowing for a second marriage provided that the substantive and formal requirements set forth in the Marriage Law, Government Regulation Number 9 of 1975, and the Compilation of Islamic Law are satisfied. Meanwhile, criminal liability applies only when the elements of a criminal offense are proven to exist, in accordance with the principles of legality and *nullum crimen sine culpa* (no crime without fault). Therefore, harmonizing marriage law and criminal law is essential to ensure legal certainty, justice, and legal protection for all parties involved.

**Keywords:** Criminal Liability, Crimes, Second Marriage.

### INTRODUCTION

Marriage is one of the most fundamental social institutions and legal relations in the order of life of Indonesian society. This institution is not only a civil bond or a personal civil relationship between a man and a woman but also functions as a pillar of family formation which is positioned as the smallest unit in the social structure. Therefore, the existence of marriage has a very wide and significant influence on social, cultural, religious, and legal certainty aspects in the life of the nation (Arief, 2016).

In the national legal order, the rules regarding the institution of marriage are explicitly regulated in Law Number 1 of 1974 concerning Marriage which was later updated through Law Number 16 of 2019. Based on the provisions of Article 1 of Law Number 1 of 1974,

marriage is defined as an innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the One Godhead. This juridical formulation indicates that marriage in Indonesia is not only reviewed from the formal dimension of civil law certainty but contains a very strong religious moral and spiritual dimension.

Within the philosophical and juridical framework of Indonesian marriage law, the state establishes the principle of monogamy as the main principle. This principle is affirmed in Article 3 paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, which determines that basically a man can only have one wife and a woman can only have one husband. However, the national marriage law system does not close the door at all to the possibility of the implementation of second marriage or polygamy. Indonesia's positive law still provides a pioneer mechanism for second marriage through exceptions that are strictly regulated by laws and regulations. This shows that second marriage is not an act that is absolutely prohibited in national law, but a form of *conditional legal* action that must meet all substantive and procedural requirements that have been set by the state (Ismail, 2025).

Based on the Indonesian marriage law system, the validity of a marriage is determined cumulatively through two main pillars, namely substantive requirements and formal requirements. Substantive requirements are closely related to objective and subjective conditions that must be inherent in the prospective married couple, such as the existence of pure consent without coercion from both parties, the fulfilment of the minimum age limit for marriage, and the absence of legal obstacles or prohibitions to marriage as determined by law. On the other hand, formal requirements are directly related to aspects of the procedures or procedures for the implementation of marriage, including the need to perform the marriage in accordance with the teachings and laws of their respective religions and the obligation to register it with the authorized marriage registrar.

Especially in the context of the implementation of the second marriage, Indonesia's positive law imposes a much stricter requirement regime compared to the first marriage. A husband who intends to have a second marriage is required by law to first apply and obtain official permission from the judiciary (Religious Court for Muslims or District Court for non-Muslims). In addition to the need to prove real reasons as required in the Marriage Law, the applicant is also required to obtain written consent from the previous legal wife as well as prove financial ability and guarantee of justice for his wife and children (Muladi & Arief, 2010). This strict provision is designed not to make it difficult, but to provide legal guarantees for the civil rights of wives and children and prevent arbitrariness in the family.

In the context of state administrative law, marriage registration has a very crucial position because it acts as authentic evidence as well as a form of recognition of state sovereignty over the legal status of a marital relationship. Through official registration instruments at the Office of Religious Affairs (KUA) or the Population and Civil Registration Office (Disdukcapil), the legal status of husbands, wives, and children born is guaranteed strong legal certainty. This certainty has direct implications for various civil affairs, such as inheritance rights, division of common property (*gono-gini*), population administration, and family law dispute resolution mechanisms (Alamsyah & Somadiyono, 2022).

Unfortunately, in the social reality of society, marriage practices are often found that ignore this aspect of state registration, one of which is the phenomenon of *nikah siri*. Serial marriage is a marriage that is carried out based on religious provisions but is deliberately not registered with the state's official registrar. Juridically, the marriage is considered valid according to religious norms but does not have legality and legal force in the eyes of positive state law. The implication is that the legal position of the wife becomes very vulnerable because it is not recognized administratively, and the children who are born have the potential to lose the protection of their civil and civil rights from the father (Alamsyah & Somadiyono, 2022).

Although basic norms regarding the terms and registration of marriage have been systematically formulated in national regulations, the reality on the ground shows that there is still a rampant form of marriage that deviates from the provisions of the law. This phenomenon is a fundamental indicator that the level of *legal awareness and compliance* of some Indonesian people towards the urgency of the validity of administrative marriage is still relatively low (Arief, 2016). This violation of the conditions of marriage has developed into a legal dilemma and a complicated social problem, which undermines the civil order of the family.

One form of problem that is rampant in practice is carrying out a second marriage unlawfully (*unlawful second marriage*). There are many cases where a husband performs a second marriage without first applying for permission to the court, without obtaining the consent of the first wife, or carried out by hiding his marital status that is still legally binding. This illegal polygamy practice is often pursued through the route of under-hand marriage (*siri*) or by manipulating population data to avoid the screening of the rules of the marriage law. This kind of action directly reduces the meaning of guaranteeing legal certainty and triggers prolonged civil disputes for the parties involved.

Other modes of violation that often trigger serious legal implications are falsification of marital status and misuse of personal identity. Cases in the field show manipulative actions in which a person who is still legally bound by marriage claims to be single, widowed, or widower in order to carry out a new marriage (Irmawanti & Arief, 2021). This action is often followed by the creation or misuse of fake population administration documents, such as ID cards, Family Cards, and fake Single Certificates. In addition, there are also acts of hiding marital status or avoiding marriage dispensation licensing procedures required by law. This act of administrative manipulation not only harms couples who are married dishonestly but also threatens the state administrative order system and damages the pillars of justice in marriage institutions (Irmawanti & Arief, 2021; Lubis et al., 2026).

As a transformative step in reforming the national criminal law system, the Government and the House of Representatives of the Republic of Indonesia have passed Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code). The presence of the New Criminal Code ends the enactment of the old Criminal Code (*Wetboek van Strafrecht*) which is a Dutch colonial legacy and is considered no longer in line with the development of legal values of Indonesian society (Arief, 2023). This criminal law reform is a manifestation of efforts to break free from the colonial criminal paradigm towards the development of a national criminal system that is rooted in the values of legal certainty, justice, and the protection of human rights. This reform does not only update the formulation of criminal acts and the imposition of sanctions but also extends to the restructuring of acts that harm the social order of society, including criminal acts in the field of marriage institutions.

The New Criminal Code (Law No. 1 of 2023) presents a juridical breakthrough by including several unlawful acts in the practice of marriage into the qualification of criminal acts. The State through the New Criminal Code pays serious attention to fraudulent acts that have the potential to harm the civil rights of other parties and disrupt the legal order of marriage. Some forms of acts that have obtained the scope of criminal regulation in the New Criminal Code include:

1. Criminal forgery of marital status;
2. The use of false identities or documents in the process of holding a marriage;
3. The practice of marriage that is carried out in violation of legal prohibitions or legal requirements; and
4. The implementation of polygamy without meeting the procedural mechanisms and permits set by the marriage law (Ismail, 2025).

This regulation confirms a fundamental paradigm shift in Indonesia's *criminal policy* (Arief, 2023). Unlawful acts in marriage are no longer reviewed solely as private, civil, or

ordinary administrative matters, but have shifted to violations that have a criminal law dimension if the act contains elements of fraud, bad faith, and causes serious harm to the victim. This paradigm transition is reflected in four key aspects:

1. **A change in the orientation of the penalty:** Stripping away the colonial formalistic approach and adapting it to national legal values;
2. **Protection of victims:** Emphasizing protection guarantees for women and children who are often the most disadvantaged parties due to illegal marriage (Dalimunthe et al., 2026);
3. **Strengthening family law certainty:** Affirming the orderliness of marriage administration registration through the threat of criminal sanctions; and
4. **Affirmation of criminal liability:** Clarifying the criminal elements for the act of concealing status and false information in marriage (Muladi & Arief, 2010; Ismail, 2025).

Although the New Criminal Code has contained various reforms to criminal enforcement, the relationship between marriage law and criminal law still raises complex juridical problems in the realm of practice. The fundamental problem lies in the lack of a clear conceptual limit on what is categorized as "illegal marriage" from a criminal law perspective (Abdullah & Waskito, 2026). In reality, a marriage is often considered valid by local religious or customary law, but at the same time is considered invalid or procedurally flawed according to state administrative law. This condition triggers uncertainty about when an administratively defective marriage can be withdrawn into a sanctionable criminal event.

This complexity is further exacerbated by the clash of views between four living and applicable legal systems in Indonesia, namely:

1. **Religious Law:** Which prioritizes the fulfillment of the harmony and legal conditions of marriage according to sharia or religious doctrine;
2. **Customary Law:** Which in some regions still recognizes the applicability of local customary marriage traditions or procedures;
3. **State Administrative Law:** Which requires the registration and authority of officials of the recording agency as an absolute condition of state legality; and
4. **Criminal Law:** Which provides the threat of criminal sanctions for manipulative or fraudulent acts that accompany the implementation of marriage (Muladi & Arief, 2010).

These developments and conflicts of perspectives often confuse law enforcement officials in implementing the rules. For example, *nikah siri* is recognized as valid by some religious laws but is considered to have no civil force by state law. Meanwhile, in the context of polygamy without permission or identity forgery, this act clearly injures the rights of other parties and has the potential to meet the elements of a criminal act. The lack of optimal enforcement of criminal sanctions so far has triggered critical questions about the extent of the effectiveness of the New Criminal Code (Law No. 1 of 2023) in building legal certainty and providing real protection for family institutions.

Because of this, several urgent juridical issues have arisen that require in-depth analysis, among them:

1. Legal criteria and limitations when a marriage violation turns into a criminal act;
2. Which legal subjects can be held criminally liable (whether only the husband, the new spouse, or the party who assists in carrying it out);
3. How to Prove Criminal Elements Regarding Fraud or Falsification of Marital Status; and
4. The limits of criminal law authority in intervening in violations rooted in marriage administration issues (Arief, 2023; Ismail, 2025).

The practice of marriage that is not in accordance with the provisions of national law has proven to be a continuing legal problem that has a systemic impact. The practice of polygamy without permission, serial marriage, and forgery of marital status has clearly taken away and

ignored the civil rights of victims, especially women and children who are born. These losses include the loss of certainty of maintenance rights, the hampering of the management of inheritance rights, and the absence of legal protection when domestic disputes occur. This reality emphasizes that the problem of unlawful marriage is not only a matter of moral or religious norms, but an urgent issue that is closely related to the protection of human rights and the national legal order (Arief, 2016)

About the New Criminal Code brings a breath of fresh air for the reform of the criminal law, the implementation of marriage articles still leaves practical doubts. The interpretation of the scope of criminal acts, the clarity of the limits of criminal responsibility of perpetrators, and the effectiveness of the application of criminal sanctions in the field still require a comprehensive academic study. In addition, the dualism of views between the validity of marriage according to religious teachings and the validity according to state administration needs to be bridged so as not to trigger legal uncertainty that is detrimental to society.

Based on the description above, it can be formulated that some of the main problems that will be researched and described in this writing are as follows, How is the validity of a second marriage according to Indonesian Positive Law and How is criminal liability for the perpetrators of the second marriage.

## **METHODS**

The research method used is normative legal research. Approach to in-depth problems. This research is carried out using a legal approach to problems related to legal material, and conceptual arguments are carried out in these problems by considering legal concepts and principles. Normative legal research focuses its study on legal principles, legal systematics, legal synchronization, and laws and regulations that are in accordance with the problems being studied.

## **RESULTS AND DISCUSSION**

### **Regulating the Validity of Second Marriage According to Indonesian Positive Law**

Marriage is a legal institution that receives constitutional protection because it is related to the formation of the family as a basic unit in social life. Therefore, the state through positive law regulates in detail the terms, procedures, and legal consequences of a marriage, including the implementation of a second marriage (polygamy). The regulation aims to provide legal certainty, ensure protection of the rights of husbands, wives, and children, and prevent the abuse of the institution of marriage that can harm other parties. This condition is in line with the background of research that shows that the practice of second marriage without meeting the legal requirements still often occurs, either through serial marriage, identity forgery, or polygamy without court permission, thus causing legal uncertainty regarding the marital status, position of children, inheritance rights, and criminal liability of the perpetrator.

Constitutionally, Indonesia is a state of law as affirmed in the 1945 Constitution of the Republic of Indonesia, Article 1 paragraph 3. The consequence of this principle is that every legal relationship, including marital relations, must be carried out based on the provisions of laws and regulations. Thus, the validity of marriage is not only determined by the fulfillment of religious provisions but must also meet the requirements determined by the state as a form of legal protection for all interested parties.

The main provisions regarding marriage are contained in Law No. 1 of 1974 jo. Law No. 16 of 2019. In Article 2 paragraph 1 it is emphasized that marriage is valid if it is carried out according to the laws of each religion and its beliefs, while Article 2 paragraph 2 requires every marriage to be recorded according to the provisions of laws and regulations. This provision shows that Indonesian law combines elements of religious legitimacy and state administration as a unified marriage legal system. As stated by Amiur Nuruddin and Azhari Akmal Tarigan (Nuruddin & Tarigan, 2006), the registration of marriages by state officials acts as a formal

juridical guarantee to protect civil rights arising from marriage. The status of Marriage Law as a law that is still in force and has been amended through Law Number 16 of 2019 can be seen in the official government database.

The principle embraced in Indonesian marriage law is the principle of monogamy, as affirmed in Law No. 1 of 1974, Article 3 paragraph 1 which states that in principle a man can only have one wife and a woman can only have one husband. However, this principle is not absolute monogamy because Article 3 paragraph 2, Article 4, and Article 5 open the possibility of a second marriage if they obtain court permission and meet the requirements determined by law. This arrangement shows that Indonesia's positive law adheres to open monogamy, which provides limited space for polygamy in order to maintain a balance between religious freedom and the protection of women's rights (Septiandani, 2025).

The requirement to obtain a license to perform a second marriage is not given freely but must be based on limiting reasons. Article 4 paragraph 2 stipulates that the court can only grant permission if the wife is unable to carry out her obligations as a wife, suffers from a physical disability or incurable disease, or is unable to bear children. In addition, Article 5 requires the consent of the wife, the ability of the husband to guarantee the needs of all his wives and children, and the assurance that the husband will act fairly. The regulation shows that the permission for polygamy is not an absolute right of the husband, but an authority that is strictly limited by law to protect the interests of the family.

Further arrangements regarding the procedure for granting permission are contained in Government Regulation No. 9 of 1975 as the implementing regulation of the Marriage Law. This regulation regulates the procedures for submitting applications for polygamy licenses, examinations by the court, proving the reasons submitted by the applicant, and the mechanism for determining the court. Thus, the validity of a second marriage according to Indonesian positive law is not enough only based on the agreement of the parties or implementation according to religion but must go through legal procedures determined by the state.

For Muslims, this provision is reaffirmed in the (Compilation of Islamic Law, Articles 55–59), which requires that polygamy can only be carried out if it obtains the permission of the Religious Court and meets the conditions as stipulated in the Marriage Law. This is in line with the view of Ahmad Rofiq (Rofiq, 2021) who states that the integration between religious law and administrative registration by the state aims to create the protection of the legal certainty of Islamic families in Indonesia. Thus, between the Marriage Law, Government Regulation Number 9 of 1975, and the Compilation of Islamic Law, there is a complementary relationship in forming a national marriage legal system.

From the perspective of the State of Law Theory, the arrangement shows that the state does not completely hand over the affairs of marriage to individuals but intervenes through legal norms to ensure legal certainty and protection of citizens' rights. The state is obliged to ensure that every second marriage is carried out in accordance with legal procedures so as not to cause disputes regarding the legal status of wives, children, or joint property.

Furthermore, when analyzed using the Theory of Justice (Radbruch, 1950), restrictions on the implementation of second marriages are a form of balance between the value of justice, legal certainty, and utility. The state does not absolutely prohibit the practice of polygamy because it considers the aspect of religious freedom, but at the same time provides legal restrictions to prevent abuse that has the potential to harm women and children. Thus, the regulation of court permission, the consent of the wife, and the economic capacity of the husband is a legal instrument that aims to realize substantive justice in family relationships.

The regulation of polygamy in national law is a compromise between the values of Islamic law and the principle of protection of women's rights through state supervision mechanisms. Legal certainty can only be realized if legal norms are clearly formulated and applied consistently. Violations of the provisions of marriage law can be the basis for the

emergence of criminal consequences if they meet the elements of criminal acts determined by the law.

Scientific studies also show that marriage registration and the fulfillment of licensing procedures have a function as an instrument of legal protection for women and children (Hasan, 2021: 1095). Various studies have concluded that second marriages that are carried out without meeting legal requirements have the potential to cause disputes regarding legal status, inheritance rights, alimony, and population administration (Fauzi & Aminah, 2022), so consistent law enforcement is needed to ensure legal certainty.

According to the author, the regulation on the validity of second marriage in Indonesian positive law has in principle provided an adequate legal basis through Law No. 1 of 1974 jo. Law No. 16 of 1919, Government Regulation No. 9 of 1975, as well as the Compilation of Islamic Law. The regulation reflects the application of the principle of open monogamy which accommodates the limited practice of polygamy on the condition of obtaining court permission, the wife's consent, and the husband's ability to act fairly and ensure the needs of the family. However, based on the analysis of the research background, the main problem lies not in the lack of legal norms, but in the weak public compliance with legal procedures and the lack of optimal supervision and law enforcement of the practice of second marriage carried out without meeting the requirements of laws and regulations. As a result, the practice of serial marriage, identity forgery, and polygamy without permission is still found which causes legal uncertainty regarding the status of the second wife, children, and joint property. Therefore, according to the author, harmonization between marriage law, population administration law, and criminal law is needed along with the strengthening of the supervisory function by the state so that the legal objectives in the form of legal certainty, justice, and usefulness as stated by Gustav Radbruch (Radbruch, 1950) can be effectively realized in the implementation of marriage law in Indonesia.

### **Criminal Liability of the Perpetrator of an Invalid Second Marriage in Indonesian Criminal Law**

Criminal liability is a juridical consequence that arises when a person commits an act that meets the elements of a criminal act and against him can be proven to be guilty (*geen straf zonder schuld*) (Hiariej, 2023). In this study, criminal liability is not born solely because someone commits a second marriage, but because the second marriage is carried out in a way that is contrary to the provisions of the law, for example, still bound by a valid marriage without obtaining permission as required by the Marriage Law, using a false identity, giving false information to the marriage registrar, or committing deception so as to cause harm to other parties. This is in line with the view of Wirjono Prodjodikoro (Prodjodikoro, 2003: 55) who affirms that the reprehensibility of a criminal act lies in malicious intent (*mens rea*) and the implementation of unlawful acts (*actus reus*). Thus, as has been described in the background of the research, the legal problem lies not only in the validity of the second marriage, but also in the possibility of imposing criminal sanctions on perpetrators who deliberately abuse the institution of marriage to evade legal provisions.

The enactment of Law No. 1 of 2023 concerning the Criminal Code (National Criminal Code) has brought a paradigm shift in the regulation of criminal acts related to family life. The National Criminal Code comes into effect on January 2, 2026, and becomes the basis for national criminal law that replaces the colonial legacy Criminal Code.

In contrast to the assumptions that have developed in society, not every second marriage without court permission is automatically a criminal offense. Criminal law still adheres to the principle of legality (*nullum crimen sine lege*) as affirmed in the National Criminal Code Article 1 paragraph 1 and explained in detail by Eddy O.S. Hiariej (Hiariej, 2023). This means that a person can only be convicted if his or her actions meet the elements of a criminal act that has been determined by the Law. As emphasized by Barda Nawawi Arief (Arief, 2011),

criminal law policy in criminalizing an act must be based on rational criteria and not immediately turn administrative violations into criminal offenses without the existence of real evil acts. Therefore, violations of administrative provisions in the Marriage Law do not necessarily directly give rise to criminal liability if they are not accompanied by the required criminal elements.

In practice, criminal liability is more appropriately applied if the second marriage is carried out through unlawful acts that meet the criminal elements, including:

- a. Concealing the status of still being bound by marriage;
- b. Using a false identity;
- c. Forging population documents;
- d. Giving false testimony to the marriage registrar;
- e. Committing fraud against potential spouses;
- f. Performing a second marriage with the intention of eliminating the rights of the first wife.

These acts are no longer in the realm of family law alone but have entered the realm of criminal law because they contain elements of intentionality, deception, or falsification of documents.

When analyzed using the Theory of Criminal Responsibility (Hiariej, 2023: 162), a person can only be convicted if several basic elements are met, namely the existence of a criminal act (*strafbaar feit*), the ability to be responsible (*toerekeningsvatbaarheid*), the existence of a mistake in the form of intentionality or forgetfulness, and there is no justification or excuse for forgiveness. According to Sudarto (Sudarto, 2018), punishing someone without any fault is an act that is contrary to the sense of justice, because criminal liability requires a reprehensible mental attitude from the perpetrator of the criminal act. Therefore, in the case of a second marriage that is not legal, it is not enough for law enforcement officials to prove that the perpetrator has committed a second marriage but also must prove that the perpetrator knows that he is still bound by a legal marriage, deliberately evades legal procedures, and performs actions that meet the formulation of delicacy.

The principle of *geen straf zonder schuld* is the foundation of Indonesia's criminal accountability system (Hiariej, 2023). Mistakes are an absolute requirement for criminalization so that the state cannot impose a crime only based on the consequences that arise without proving the existence of an inner relationship between the perpetrator and his actions.

As explained by Moeljatno (Moeljatno, 2008) and also taught by Roeslan Saleh (Saleh, 1983), Indonesian criminal law adheres to a dualistic understanding that separates criminal acts (*strafbaar feit*) and criminal liability (*creator*). This concept is reaffirmed by Eddy O.S. Hiariej (Hiariej, 2023) that criminal liability is an advanced stage that only emerges after the proof of a criminal act that is unlawful. Thus, proving the elements of a criminal act and proving guilt are two different but interrelated stages. This concept is very appropriate in cases of a second marriage that is invalid because not all violations of marriage procedures can be qualified as criminal acts.

From the perspective of Criminal Theory, the provision of criminal penalties against the perpetrators of a second marriage that is carried out unlawfully is not only aimed at repaying the wrongdoing of the perpetrator, but also protects the interests of the community, maintains family law order, and provides a preventive effect so that similar practices do not continue to develop. This is in line with the purpose of criminalization in Law No. 1 of 2023, Article 51 which places criminalization as a means of preventing criminal acts, resolving conflicts, restoring balance, and fostering perpetrators.

In the perspective of Justice Theory (Radbruch, 1950), the application of criminal liability must also pay attention to the balance between legal certainty, justice, and utility. Criminalization should not be applied excessively to every violation of the marriage administration but should be focused on acts that really contain elements of fraud, forgery, or

abuse of rights that are detrimental to other parties. Such an approach will result in law enforcement that is proportionate and in accordance with the purpose of establishing the National Criminal Code.

Scientific studies also show that the practice of polygamy without legal procedures often correlates with other criminal acts, especially falsifying population administration documents (Sari et al., 2024) and providing false information to authorized officials (Rauf et al., 2024). Therefore, criminal liability in this kind of case should not only be seen from violations of marriage law, but also from the fulfillment of delinquency elements in general criminal law. This approach is considered to provide more protection for women and children who are victims of abuse of marriage institutions.

According to the author, criminal liability for the perpetrator of an illegitimate second marriage cannot be applied just because of a violation of the administrative provisions in the Marriage Law but must be based on the fulfillment of the elements of the criminal act in accordance with the principle of legality and the principle of *geen straf zonder schuld* which is the basis of the Indonesian criminal law system (Hiariej, 2023). Thus, a person can only be held criminally liable if it is legally and convincingly proven that he has committed an unlawful act accompanied by elements of wrongdoing, such as providing false information about marital status, using false identities or documents, committing fraud against a prospective spouse, or deliberately hiding the fact that he is still bound in a legal marriage so as to cause losses to other parties. This approach is in line with the purpose of criminalization in Law No. 1 of 2023, Article 51, which not only focuses on retribution, but also on community protection, conflict resolution, balance restore, and perpetrator coaching. Therefore, according to the author, a more comprehensive synchronization is needed between the provisions in the Marriage Law and the National Criminal Code so that there is no gap or overlap in regulations regarding the boundaries between violations of marriage administration and criminal acts, so that law enforcement is able to provide optimal legal protection for women, children, and aggrieved parties while realizing legal certainty, justice, and benefits as stated by Gustav Radbruch (Radbruch, 1950) in the Indonesian positive legal system.

## CONCLUSIONS AND RECOMMENDATIONS

### Conclusion

#### 1. The Validity of Second Marriage in Indonesian Positive Law

Application of the Principle of Open Monogamy: Indonesia's positive law—through the Marriage Law, Government Regulation No. 9/1975, and the Compilation of Islamic Law—adheres to the principle of open monogamy. A second marriage (polygamy) is declared legally valid if it is carried out according to religious provisions and meets the administrative requirements of permission from the court.

Constraints on Legal Effectiveness: Although the normative foundation is adequate, its effectiveness in society is still weak due to the rampant practice of serial marriage, identity forgery, and polygamy without permission. This has an impact on the emergence of legal uncertainty regarding the status of the second wife, the position of children, and joint property.

#### 2. Criminal Liability of Invalid Second Marriage Perpetrators

Principles of Legality and the Principle of Error: Violations of marriage administration procedures do not automatically result in criminal consequences. Criminal liability can only be requested if the act meets the elements of unlawfulness and is based on the principle of error (*geen straf zonder schuld*).

Criminal Offence Formulation: Criminal sanctions (as stipulated in the National Criminal Code/Law No. 1 of 2023) can only be imposed if the perpetrator is proven to have committed an accompanying criminal act, such as providing false information, falsifying population documents, or committing marital status fraud that harms other parties.

## Recommendations

### 1. Related to Marriage Law Enforcement & Enforcement

Harmonization of Regulations: It is necessary to synchronize and harmonize stricter legal norms between the Marriage Law, the population administration law (Disdukcapil), and the National Criminal Code to prevent legal vacuums. Strengthening Supervision: Supervision by the state and related institutions (such as the KUA and the Religious Courts) needs to be increased to minimize the practice of illegal polygamy or identity forgery.

### 2. Related to Criminal Responsibility & Victim Protection

Firmness of Criminal Law Enforcement: Law enforcement officials are expected to act decisively and proportionately in processing second marriage violations that contain elements of crime (forgery/fraud). Protection of Women's and Children's Rights: Criminal law enforcement should be oriented towards restoring justice and protecting the civil rights of women and children who are victims of abuse of marriage institutions.

## REFERENCES

- Arief, Barda Nawawi. (2011). *Bunga Pourai Criminal Law Policy* (Revised Edition). Jakarta: Kencana Prenada Media Group.
- Fauzi, Ahmad, & Aminah, Siti. (2022). "Legal Implications of Polygamy Marriage Without Court Permission on the Inheritance Rights and Status of Children." *Journal of Islamic Family Law*, 7(2), 310–325.
- Hasan, Nur. (2021). "Marriage Registration as Authentic Evidence and Instrument of Legal Protection for Women and Children." *Journal of Legal Issues*, 50(4), 1090–1102.
- Hiariej, Eddy O.S. (2023). *Principles of Criminal Law* (Revised Edition). Yogyakarta: Cahaya Atma Pustaka.
- Moeljatno. (2008). *Principles of Criminal Law* (Revised Edition). Jakarta: Rineka Cipta.
- Nuruddin, Amiur, & Tarigan, Azhari Akmal. (2006). *Islamic Civil Law in Indonesia: A Critical Study of the Development of Islamic Law from Fiqh, Law No. 1/1974 to KHI*. Jakarta: Kencana Prenada Media Group.
- Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning *the Compilation of Islamic Law (KHI)*.
- Prodjodikoro, Wirjono. (2003). *Principles of Criminal Law in Indonesia*. Bandung: PT Refika Aditama.
- Radbruch, Gustav. (1950). *Legal Philosophy* (4th ed.). Stuttgart: K.F. Koehler Verlag.
- Rauf, Abdul, et al. (2024). "Criminal Liability of Perpetrators of Falsifying Marital Status Information in Authentic Marriage Deeds." *Journal of Law and Humanities*, 11(3), 11920–11932.
- Republic of Indonesia. *Constitution of the Republic of Indonesia in 1945*.
- Republic of Indonesia. *Law No. 1 of 1974 concerning Marriage*. Statute Book of the Republic of Indonesia No. 1 of 1974, Supplement to Statute Book of the Republic of Indonesia No. 3019.
- Republic of Indonesia. *Law Number 1 of 2023 concerning the Criminal Code (KUHP)*. Statute Book of the Republic of Indonesia Number 1 of 2023, Supplement to Statute Book of the Republic of Indonesia Number 6842.
- Republic of Indonesia. *Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage*. Statute Book of the Republic of Indonesia Number 186 of 2019, Supplement to Statute Book of the Republic of Indonesia Number 6401.
- Republic of Indonesia. *Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage*. Statute Book of the Republic of Indonesia No. 12 of 1975, Supplement to Statute Book of the Republic of Indonesia No. 3050.
- Rofiq, Ahmad. (2021). *Islamic Civil Law/Marriage in Indonesia*. Jakarta: PT RajaGrafindo Persada.

- Saleh, Roeslan. (1983). *Criminal Acts and Criminal Liability: Two Basic Definitions in Criminal Law*. Jakarta: Aksara Baru.
- Sari, Putri Mayang, Wirdyaningsih, & Djubaedah, Neng. (2024). "Annulment of Polygamous Marriage on the Rights of Second Wives Due to Identity Forgery (Study of the Decision of the Tanjung Karang Religious Court Number 498/Pdt.G/2022/PA. Tnk)." *Indonesian Notary*, 6(1), 1–15.
- Septiandani, Dian. (2025). *Polygamy in Law in Indonesia*. Semarang: USM Press.
- Sudarto. (2018). *Criminal Law I*. Semarang: Sudarto Foundation.