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Pelakor Overviewed from Indonesian Law Perspective

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ABSTRACT

Pelakor is currently a worrying phenomenon in Indonesia. Pelakor is one of the causes of the high divorce rate. In addition, violence involving pelakor is currently a public spectacle that is shared through various media. Even minors are not infrequently involved in conflicts with pelakor. This paper analyzes the laws and regulations in Indonesia that can be used to ensnare pelakor. The results show that there is no law nor regulation in Indonesia that specifically regulate pelakor. The existing laws and regulations are not sufficient to provide maximum sanctions to pelakor.

Keywords: *Pelakor, Affair, Divorce.*

1. INTRODUCTION

The era of technology makes it easier to access information and communication. This is also the background for the birth of a new phenomenon or trend. One of these phenomena is that women "attack" other women who are considered guilty [1]. Recently, videos of violence and blasphemy have often circulated through social media against women who are considered as usurpers of men who are "pelakor". The term pelakor is closely related to the practice of affair. Pelakor refers to a woman who has an affair with a married man [2].

Perpetrators of affair come from almost all circles, not only businessmen and celebrities. Many affairs eventually become public consumption. Usually affairs involving officials, officials' children, businessmen, and celebrities are reported in both printed and social media (Facebook, Twitter, Instagram, Line, Telegram, Tiktok and other social media). The affair committed by these famous people caused various comments from all walks of life, generally people blasphemed the pelakor, through various ways on social media. The perpetrators of affair who come from officials will receive sanctions from the agency where they work. However, male affair perpetrators who are not from officials generally do not receive any sanctions because they are considered as

private matters. This makes the number of pelakor increasing day by day. The high number of pelakor causes the high number of divorces.

In 2010 affair was the second leading cause of divorce after economic problems [3]. The divorce rate due to affair continues to increase from year to year. In 2018 there were 24,864 cases, in 2019 there were 27,353 cases and in 2020 there were 29,212 divorce cases based on data from the Directory of Decisions of the Supreme Court of the Republic of Indonesia. These data are cases of affair that go to court. There are still many cases of affair that do not go to court. This is because there are still many wives who are resigned to seeing their husbands with the pelakor because of economic needs, taking care of their children's psychology and hoping that their husbands will separate from the pelakor.

If we look closely at cases of affairs between women and men with wives, most of them involve men aged 35 years and over whose economic status is affluent. Generally, these men provide or fulfill material needs and various facilities for pelakor. It can be seen that pelakor usually live in luxury with various luxurious goods and facilities provided to them. There are several factors that make women become pelakor, namely: First, material aspects related to finance and economic material. Second, social aspects related to lifestyle or style. Third, the

psychological aspect, which is related to love and security [4].

The high number of pelakor is already at an alarming stage. This is due to the fact that the pelakor case does not only involve the husband, wife, and pelakor. In the videos of harassing pelakor circulating in various media, not only the wife commits violence, but also the children from the marriage. Even in some cases children are perpetrators of blasphemy against pelakor. The involvement of children in the pelakor case will certainly cause psychological problems for the child.

The rise of the pelakor could be because the sanctions given to the pelakor are considered not firm. It can be seen that several cases of affair that stick out in Indonesia are actually the legal wife who is the victim of the affair, divorced from the man who committed the affair. Usually people give social sanctions in the form of blasphemy, swearing, and various oblique designations to pelakor. Because social sanctions are not strict sanctions, they certainly do not have a deterrent effect on pelakor, therefore it is important to look at "Pelakor Overviewed from Indonesian Law Perspective"

2. RESEARCH METHOD

The research method used in this research is normative juridical. Normative juridical research is also known as library research which is defined as legal research conducted by examining library materials or secondary data [5]. Based on the type of research used above, the approach used in this research is carried out through a statutory approach. The data used in this research is secondary data. Secondary data were collected from official documents, books, journals, research reports and others.

3. FINDINGS AND DISCUSSION

Specifically, there is no single legal rule that regulates pelakor in Indonesia. However, there are several laws and regulations that can be used as the basis for sanctioning pelakor.

3.1 Indonesian Criminal Code

In Indonesia, there are no rules that specifically regulate legal sanctions for pelakor. But for people who have sexual relations with other people's legal partners/husbands, they can be charged with adultery. Adultery is regulated in article 284 of the Indonesian Criminal Code [6]. Based on article 284, those who commit adultery are threatened with a maximum imprisonment of nine months. However, it should be underlined that article 284 is a complaint offense. Thus the perpetrator of adultery can only be tried with a complaint from a legal partner. Thus, the pelakor can only be charged with this article if the wife makes a

complaint against affair committed by her husband with the pelakor.

Article 284 stipulates that the main perpetrator who is ensnared is the husband, while the pelakors only considered as a participating perpetrator. Conditions like this often make the wife reluctant to report the pelakor because basically the wife only wants to punish the pelakor who has an affair with her husband. This situation makes the number of pelakor in Indonesia increase. In addition, many wives are afraid of being divorced if they report their husbands who have committed adultery with the pelakor. In many cases of affair usually the husband prefers the pelakor to the wife

Furthermore, the criminal threats contained in Article 284 are fairly light so that they do not cause fear for the pelakor. Therefore Article 284 is considered not to provide a deterrent effect for pelakor. Thus, it is actually necessary to have strict criminal regulations with severe sanctions against the pelakor. Unfortunately, the Indonesian Criminal Code Bill 2019 does not regulate pelakor. Just like the Indonesian Criminal Code, pelakor can only be charged with adultery. It's just that the criminal sanctions for adultery in the Indonesian Criminal Code Bill 2019 are heavier than the sanction contained in the Indonesian Criminal Code. The criminal penalty for adultery in the Indonesian Criminal Code Bill 2019 is a maximum of 12 months.

3.2 Marriage Law 1/1974

The Marriage Law 1/1974 does not directly regulate the pelakor, but the Marriage Law 1/1974 essentially limits the space or opportunity for the pelakor. This is because in a marriage a man can only have one wife. However, the court can give permission to a man to have more than one wife or have polygamy if the parties concerned agree. A man will have more than one wife, so he is obliged to apply for a polygamy permit to the court in the area where he is domiciled. The court only gives permission to a man who will have more than one wife if: the wife is unable to carry out her obligations as a wife; the wife has a disability or an incurable disease; the wife cannot bear children [7]. An application can be submitted to the court, if it fulfills the conditions that have been determined, namely; there is an agreement from the wife or wives, there is certainty that the husband is able to guarantee the necessities of life for his wives and children, and there is a guarantee that the husband will treat his wives and children fairly. Consent is not required for a husband if his wife or wives cannot be asked for consent and cannot be a party to the agreement, or if there is no news from his wife for at least two years, or for other reasons that need to be assessed by the court.

With the restrictions required by the law for men who will marry again will certainly greatly limit the chances of a woman to become a pelakor. This opportunity is

further narrowed by the firmness in the Marriage Law 1/1974 which stipulates that children born out of wedlock only have a civil relationship with their mother and their mother's family. This is confirmed in Article 43 Paragraph (1) of the Marriage Law 1/1974. Thus, basically the Marriage Law 1/1974 provides strong protection for the position of a wife.

However, in 2010 there was a change regarding the recognition of children born out of wedlock in Indonesia. This is based on the Constitutional Court's Decision Number 46/PUU-VIII/2010 which states that children out of wedlock have a civil relationship with a man as their father. The Constitutional Court's decision changed the contents of Article 43 Paragraph (1) of the Marriage Law 1/1974.

With these changes, children born out of wedlock have a civil relationship with their mother and their mother's family as well as with a man as their father which can be proven based on science and technology and/or other evidence according to the law to have blood relations, including civil relations with his family [8]. Thus, this decision of the Constitutional Court provides an opportunity for the pelakor to be admitted indirectly. Such a situation will certainly hurt the sense of justice for the wife and children born in a legal marriage who are victims of pelakor.

3.3 Government Regulation of the Republic of Indonesia 45/1990 concerning Amendments to Government Regulation 10/1983 concerning Marriage and Divorce Permits for Civil Servants

These government regulations can indirectly be used to reduce pelakor. Article 4 paragraph 2 Government Regulations 45/1990 stipulates that women who are civil servants are not allowed to become second/third/fourth wives. If violated, it will be subject to disciplinary punishment of disrespectful dismissal as a civil servant as stipulated in Article 15 paragraph 2 of Government Regulations 45/1990.

This provision can also be used to reduce the number of men who are civil servants from being involved with pelakor. Government Regulations 45/1990 it is stated that civil servants who will have polygamy or have more than one wife must first obtain permission from the official. Permission in question is a written permission. The permit must include a complete reasons underlying the request for permission to have polygamy or to have more than one wife. Civil servants who will be polygamous or have more than one wife must meet the specified requirements. The conditions that must be met are in the form of alternative conditions and cumulative conditions. Civil servants who will be polygamous or have more than one wife must meet one of the alternative requirements and all cumulative requirements.

The alternative conditions stipulated in Government Regulations 45/1990 are the same as those determined by Marriage Law 1/1974, which relates to the wife's condition. The only difference is that Government Regulations 45/1990 only applies to men who are civil servants. On the other hand, the cumulative requirements that must be met are, there is written consent from the wife, the male civil servant concerned has sufficient income to finance more than one wife and children as evidenced by an income tax certificate, and there is a written guarantee from the civil servant concerned that he will do justice to his wives and children. For civil servants who commit violations as mentioned above, they can be sentenced to one of the severe disciplinary penalties.

Furthermore, without a legal marriage bond, civil servants are also prohibited from living together as husband and wife. Thus, Government Regulations 45/1990 can minimize civil servants committing infidelity. Severe disciplinary penalties can be imposed if civil servants live together with women or men who are not their legal partners.

In fact, this Government Regulations is one of the alternatives that can be used to reduce the number of pelakor. But unfortunately the scope of this Government Regulations is only limited to civil servants and is equated with civil servants, namely, monthly employees in addition to retirement, employees of state-owned banks, employees of state-owned enterprises, employees of regional-owned banks, employees of regional-owned enterprises, village heads, village officials, and officers who carry out government affairs in the Village. So that this Government Regulations only applies to a small scope when compared between the number of civil servants and the equivalent of the current number of Indonesian citizens

From all the explanations above, there are no specific rules and sanctions for pelakor. This makes the pelakor not afraid to have an affair with a man who has a wife. Therefore, it is necessary to make a special strict rule for pelakor with maximum sanctions so that they have a deterrent effect.

4. CONCLUSION

There are no specific rules governing pelakor in Indonesia. The existing laws and regulations in Indonesia are not sufficient to provide maximum sanctions to pelakor. Even with the issuance of the Constitutional Court's Decision Number 46/PUU-VIII/2010, it indirectly provided an opportunity for recognition for the pelakor.

AUTHOR'S CONTRIBUTIONS

Conceived the ideas or experimental design of the study [1,2]. Performed experiments/data collection [3,4]. Data analysis and interpretation [5,6].

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