

Normative Luridical Analysis of Law Enforcement Against Perpetrators of The Criminal Acts of Fragment of Marriage Origins of Identity

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Abstract

The criminal offense of falsifying marital history is a crime that rarely comes to light but has the potential to cause harm to others, especially when a person's prior marital status is concealed from a prospective partner. This normative legal study analyzes the concept and legal framework of this criminal offense under Indonesian positive law, as well as its enforcement in practice, using legislative, case law, and conceptual approaches, with primary legal sources consisting of legislation and the Cibinong District Court Decision No. 260/Pid.B/2025/PN Cbi, which were analyzed using a qualitative-deductive method. The results of the study show that the concept of falsifying the origin of a marriage is not regulated as a standalone offense, but is scattered throughout Articles 277–280 of the former Criminal Code, with the core of the offense consisting of the concealment of a legal impediment to marriage (wettelijk beletsel) accompanied by the element of the perpetrator's knowledge (wetenschap), which intersects with the Marriage Law, the Population Administration Law, and their updates in Articles 401–404 of the National Criminal Code. Law enforcement faces structural challenges, the nature of complaint-based offenses, the difficulty of proving intent, the lack of integration between population and marriage data, and a legal culture that tends to resolve these issues through informal, family-based means.

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1. INTRODUCTION

The crime of falsifying the origins of marriage is a form of crime that still frequently occurs and causes losses to the injured parties (Pettanase, et. al., 2026). This act is generally carried out through falsification of marriage administration documents, especially those related to information on the origins or identities of the prospective bride and groom, so that if there is incorrect or manipulated data, this has the potential to cause serious legal consequences in the future. Falsification of origins in the context of marriage can also occur when one party is still bound by a legal marriage to another person, but this fact is hidden from the prospective partner, so that this act violates the principles of honesty and openness that should be the basis for forming a household (Fauziah, 2026).

Normatively, the Indonesian marriage legal system adheres to the principle of monogamy, meaning that a man is only permitted to have one wife and a woman is only permitted to have one husband at a time. Article 3 of Law Number 1 of 1974 concerning Marriage stipulates that the court may grant permission for a husband to have more than one

wife only if the parties concerned so desire and meet specified requirements. In practice, cases still occur where a party enters into a second marriage without the consent of the legal parties and without court permission, by concealing or falsifying information regarding their previous marital status (Jamilurrahman & Muhsan, 2026).

Crimes against the origin of marriage in Indonesia are relatively rare in the public spotlight, but in reality, they occur quite frequently, particularly in urban areas with high population densities (Sunda et al., 2026). These cases tend to receive less attention because they concern the private sphere of the parties involved and often cause embarrassment, often resulting in resolutions behind closed doors or reluctance to make them public. Crimes against the origin of marriage are regulated in Article 279 of the Criminal Code (KUHP), which carries a maximum prison sentence of five years for anyone who marries while aware of a previous marriage that constitutes a legal impediment, and a maximum of seven years if the perpetrator also conceals this fact from the other party. This provision is complemented by Article 280 of the KUHP, which carries a similar penalty for intentionally failing to disclose the existence of a legal impediment to marriage (Rizky, et al., 2026).

Since the enactment of Law Number 1 of 2023 concerning the Criminal Code on January 2, 2026, Indonesia has had a National Criminal Code, which is part of the criminal law reform aimed at realizing a criminal law system that is more in line with the values of Pancasila, societal development, human rights protection, and legal certainty. Nevertheless, the case under consideration in this research was decided based on the provisions of the old Criminal Code because the *tempus delicti* occurred before the enactment of the National Criminal Code. Therefore, the existence of the new Criminal Code remains relevant as a form of criminal law development that needs to be considered in analyzing the direction of national criminal law reform policies.

This phenomenon raises several fundamental issues. First, the existence of legal norms that explicitly prohibit falsifying marital origins has not necessarily prevented such acts, raising questions about the effectiveness of the preventive and repressive functions of the relevant criminal provisions. Second, there is a gap between the law on the books and the law in action, as reflected in the continued number of cases of falsification of identity or marital status that are not accompanied by consistent law enforcement. Third, the nature of this offense, which resembles a complaint offense, makes the law enforcement process heavily dependent on the initiative of the injured party to report, while social stigma and the tendency for family resolution prevent many cases from reaching the formal law enforcement stage.

Based on the description, the formulation of the problem studied in this research is: (1) how is the concept and regulation of the crime of falsifying the origin of marriage according to positive law in Indonesia; and (2) how is the law enforcement against perpetrators of the crime of falsifying the origin of marriage based on practice in Indonesia. This research aims to find out and analyze the two problem formulations, and is also expected to enrich the scientific treasury of criminal law and marriage law, as well as provide input for law enforcement officers, policy makers, and the wider community regarding the legal construction of this crime.

2. METHOD

This research is a normative legal study, namely legal research conducted by examining library materials or secondary data regarding legal principles and reviewing them in the practice of legal application. The approaches used include a statute approach to examine the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), and related laws and regulations; a case approach with reference to the ratio decidendi of the Cibinong District Court Decision Number 260/Pid.B/2025/PN Cbi dated May 22, 2025; and a

conceptual approach based on the views and doctrines developing in criminal law and marriage law.

The legal materials used consist of primary legal materials in the form of the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 2023 concerning the Criminal Code, Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, Law Number 24 of 2013 concerning Population Administration, and the Decision of the Cibinong District Court *a quo*; secondary legal materials in the form of books, journals, and relevant previous research results; and tertiary legal materials in the form of legal dictionaries and other supporting articles. The technique of collecting legal materials is carried out through literature studies and document studies, while the analysis is carried out qualitatively with the deduction method, namely starting from the major premise in the form of applicable legal norms, then the minor premise in the form of legal facts in the *a quo* case, to draw conclusions on the formulation of the problem being studied.

3. RESULTS AND DISCUSSION

Marriage is a legal event that not only produces legal consequences for the parties involved but also gives rise to legal consequences for children born of the marriage, particularly regarding civil status, inheritance rights, and status as legitimate children. Law Number 1 of 1974 concerning Marriage affirms that marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the One and Only God. The origin of marriage, in this context, refers to the legal facts regarding the validity of a marriage, including the identities of the parties, their previous marital status, and the presence or absence of any impediments to the marriage. When these facts are concealed, falsified, or fabricated to create a picture that is inconsistent with the actual situation, the act potentially meets the elements of the crime of falsifying the origins of marriage.

Conceptually, falsification (*vervalsing*) in criminal law is defined as the act of making something false or making something false appear as if it were genuine, with the intent to benefit oneself or another person, or to harm another party. In the context of marriage, falsification of parentage can take the form of false information regarding widowhood or widower status, concealment of consanguineous relationships that would constitute an obstacle to marriage, and falsification of population documents such as birth certificates, family cards, or certificates of unmarried status. Prodjodikoro (2003) emphasized that the element of intent (*opzet*) is essential in the crime of falsification, as the perpetrator must have intended to create a situation that is inconsistent with the truth and must have known that the information provided was false.

The provisions regarding criminal acts concerning parentage and marriage in the colonial-era Criminal Code are specifically regulated in Chapter XIII, Book Two, specifically Articles 277 to 280. Article 277 of the Criminal Code carries a maximum prison sentence of six years for anyone who intentionally conceals a person's parentage, while Article 278 of the Criminal Code stipulates the criminal penalty for claiming a child as one's own when one knows that he is not the child's father. Article 279 of the Criminal Code specifically imposes a maximum prison sentence of five years for anyone who enters into a marriage knowing that their existing marriage, or the marriage of another party, constitutes a legal impediment. Article 280 of the Criminal Code stipulates that intentionally failing to disclose the existence of a legal impediment to a marriage is punishable by a maximum of seven years if the perpetrator also conceals this fact. This series of articles demonstrates that lawmakers place honesty regarding marital origin and status as a protected legal interest (*rechtsgoed*), not merely a civil matter.

Soesilo (1995), in his commentary on the Criminal Code, explains that the intent of the lawmakers in formulating Articles 277 and 278 was to protect the legal interests of the child concerned, particularly the right to maintenance, inheritance rights, and guardianship. Concealment of origin does not always involve actively making false statements, but can also involve passive actions that lead others to misrepresent a person's identity or status. Therefore, this offense encompasses both active acts (commissive) and acts of omission (omissible). In terms of the elements of the crime, criminal acts against the origin of marriage are generally formal crimes and also require a subjective element in the form of knowledge by the perpetrator (*wetenschap*) of the existence of a barrier to a valid marriage, so that this crime is completed (*voltooid*) when the act of entering into a marriage or concealing the barrier has been carried out, without needing to wait for concrete consequences in the form of real losses for the victim.

Chazawi (2017) classifies the crime of falsifying marital origins as a crime against public trust (*misdrifven tegen de publieke trouw*), because this offense essentially protects public trust in the authenticity of documents and information relating to a person's legal status. This public trust is important because a person's marital status and origins have broad legal implications, not only limited to marital relations but also concerning the rights of third parties such as other heirs, creditors, and the state in the context of population administration. In many cases, this act is intertwined with document falsification as regulated by Article 263 of the Criminal Code, particularly if the perpetrator also falsifies the marriage certificate or book, thus applying the provisions of concurrent crimes (*concurfus*).

In addition to being regulated in the Criminal Code, regulations regarding the origins of marriage are closely intertwined with Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, which requires that marriages must be based on the consent of both prospective bride and groom and may not be conducted if there are obstacles to the marriage. Prawirohamidjojo (2016) emphasized that the principle of monogamy adopted by the Marriage Law makes any false information regarding previous marital status an act that can give rise to legal defects, both from a civil perspective in the form of annulment of the marriage, and from a criminal perspective in the form of a criminal act of falsification. This provision is reinforced by Law Number 24 of 2013 concerning Population Administration, which requires population data to be submitted truthfully and accurately. Therefore, falsifying population documents supporting a marriage that conceals a person's origins can also be subject to administrative population criminal sanctions.

Darmabrata (2004) added that in the practice of registering marriages at the Office of Religious Affairs and the Civil Registry Office, information regarding the origin and marital status of the prospective bride and groom is generally based on administrative documents such as a certificate of unmarriage, a divorce certificate, or the death certificate of a previous spouse. This reliance on administrative documents opens the door to falsification of marital origins, as marriage registrars generally lack the authority or means to substantively verify the material veracity of the submitted documents. As a result, marriages conducted based on false information remain administratively registered, even though they may materially contain serious legal flaws.

Developments in national criminal law have also brought about updates to the regulation of this offense. Through Law Number 1 of 2023 concerning the Criminal Code, which came into effect on January 2, 2026, the provisions originally scattered across Articles 277 to 280 of the old Criminal Code have been reorganized more systematically in Articles 401 to 404 of the new Criminal Code. This reform was implemented as part of a recodification of national criminal law that is more responsive to evolving Indonesian societal values, without abandoning the substance of protections for the honesty of the

origins and legality of marriages that have been upheld since the colonial era of the Criminal Code. While emphasizing the proportionality of criminal penalties and a clearer separation of the crimes of cohabitation and adultery.

The above description demonstrates that Indonesian positive law does not explicitly and independently regulate a legal qualification referred to as “the crime of falsifying the origins of marriage.” This concept is not found as a separate article, but rather is scattered and must be constructed from a combination of the provisions of Article 279 of the Criminal Code concerning obstructed marriages, provisions concerning document forgery, and provisions of the Marriage Law and the Population Administration Law. The core of the criminal act is not falsification of documents in the technical sense as regulated in the crime of falsification of letters (Articles 263 to 266 of the Criminal Code), but rather concealment or dishonesty regarding the existing marital status as a legal barrier (*wettelijk beletsel*) for subsequent marriage, with the element of knowledge of the perpetrator (*wetenschap*) as the determining subjective element.

Law Enforcement against Perpetrators of the Crime of Falsification of Marriage Origins Based on Practice in Indonesia The legal construction of this offense can be observed in its entirety through the Decision of the Cibinong District Court Number 260/Pid.B/2025/PN Cbi. Based on the revealed legal facts, the Defendant Popon Ela Hayati entered into a secret marriage with Eperison Hutaaruk on March 15, 2013, which was stated in a Statement of Marriage under hand without being registered with the authorized agency. At that time, Eperison Hutaaruk was still the legal husband of Dermawan Simbolon, whose marriage was conducted in a Catholic manner on December 3, 1993 and was proven by the *Testimonium Matrimonii* and Marriage Certificate Number 3201-KW-21102015-0004. In the secret marriage procession, Eperison claimed to be a widower and the Defendant claimed to be a widow, which confession did not correspond to the actual situation. Dermawan Simbolon only discovered the concealment of the couple’s status in September 2017, but a police report was filed on April 22, 2024, after the relationship between the Defendant and Eperison was discovered to have continued until January 2024.

The provisions of Article 279 paragraph (1) number 2 and paragraph (2) of the Criminal Code formed the basis for the Public Prosecutor’s alternative charges and the basis for the Panel of Judges’ sentencing. In his annotation, Soesilo (1995) emphasized that the requirement for sentencing under this article is that the perpetrator knew that he or she, or the other party they intended to marry, was still bound by a marriage that had not yet been dissolved through divorce. The expert presented by the Public Prosecutor emphasized the same point, namely that the crucial element of this article is the perpetrator’s knowledge of the existence of the legal impediment, not the validity of the newly registered marriage. Thus, the crime referred to as “falsification of marital origins” is more accurately understood as concealment or dishonesty regarding an existing marital status (*verzwijging van een wettelijk beletsel*), rather than document falsification within the technical meaning of Article 263 of the Criminal Code.

The Panel of Judges, referring to Supreme Court Circular Letter Number 4 of 2016 concerning the Implementation of the Formulation of the Results of the 2016 Plenary Meeting of the Supreme Court Chamber, emphasized that a marriage contracted by a husband with another woman without the consent of his legal wife is subject to Article 279 of the Criminal Code. An interesting legal consideration in this decision is the affirmation that unregistered marriages can still be classified as “marriages” within the meaning of Article 279 of the Criminal Code, in line with the principle in Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, which states that a marriage is valid if it is conducted according to the religious law and beliefs of each party, regardless of whether or not the administrative registration

obligation is fulfilled. This construction demonstrates that Indonesian criminal law, in protecting the order of marriage, does not rely on the validity of a marriage solely on state registration, but rather on its validity according to religious law, an approach consistent with the pluralistic nature of Indonesian family law.

Judging from the law enforcement theory developed by Soekanto (2014), there are five factors that influence the effectiveness of law enforcement: the legal factor itself, law enforcement factors, facilities or infrastructure factors, societal factors, and cultural factors. The *a quo* decision demonstrates the complex dynamics of these five factors. From the legal factor perspective, the formulation of Article 279 paragraph (1) 2 of the Criminal Code is open and open to multiple interpretations because it does not explicitly define whether the “marriage” in question includes unregistered marriages, so that on the one hand it provides room for interpretation for judges to reach the practice of unregistered marriage as a crime, but on the other hand it has the potential to create legal uncertainty. From the law enforcement factor perspective, the evidentiary process shows the caution of the Panel of Judges by presenting eight factual witnesses and three cross-disciplinary experts, namely criminal law, Catholic marriage law, and Islamic marriage law, to ensure the validity of the two marriages in question before issuing a verdict, reflecting the application of the prudential principle in proving crimes that are intertwined with interfaith family law.

The means factor is also relevant to consider, given that this type of offense relies heavily on the availability of administrative evidence in the form of marriage certificates, marriage declarations, and church documents, as well as documents from the Office of Religious Affairs (KUA), which in the *a quo* case actually complement each other despite originating from different registration systems. Societal and cultural factors appear most prominent in this case. Witness testimony indicates that the practice of unregistered marriage, including Eperison’s disguising of his status as a “widower” and acceptance without strict verification by the parties to the marriage, is still prevalent and sociologically accepted in some communities, despite its administrative potential for causing harm to third parties. This phenomenon is what some experts refer to as the gap between the law on the books and the law in action, where strict criminal norms clash with social customs that are permissive of unregistered marriages. Therefore, law enforcement of this offense is in practice highly dependent on the aggrieved party’s report—in this case, the report was not filed until more than a decade after the second marriage took place.

The issue of the lapse of time between the incident and the report also touches on the issue of the statute of limitations for prosecution as regulated by Articles 78 and 79 of the Criminal Code, which the Defendant’s Legal Counsel used as a defense argument. The Panel of Judges rejected this argument, considering that the criminal penalty under Article 279 of the Criminal Code, which is a maximum imprisonment of seven years for crimes involving concealment, places the statute of limitations for prosecution at twelve years from the time the act was committed. Therefore, the report filed in April 2024 for the March 2013 act was still within the legal time limit, especially since the intense relationship between the Defendant and Eperison continued until January 2024. This consideration illustrates the application of law enforcement theory from the aspect of legal certainty (*rechtszekerheid*), where the institution of the statute of limitations is intended to provide a clear time limit so that prosecution is not carried out within an unreasonable timeframe, but at the same time must be interpreted carefully so that it does not provide a loophole for the perpetrator to avoid criminal responsibility for acts whose legal consequences are still ongoing.

From a penal theory perspective, this decision is also worthy of careful consideration through the three main schools of thought in criminal law: the absolute or retributive theory, which views punishment as retribution for a wrong done; the relative or purposive (utilitarian) theory, which views punishment as a means of deterrence; and the

combined theory, which combines elements of retribution and purpose. The Public Prosecutor's demand for a one-year prison sentence reflects an orientation toward both retribution and general deterrence, given that this offense was seen as disrupting the legal order of marriage, impacting third parties, namely the legal wife and children from the first marriage. However, the Panel of Judges ultimately imposed a lighter sentence of ten months' imprisonment, taking into account mitigating factors such as the Defendant's confession, which facilitated the trial, his remorse for his actions, and his prior convictions. This reflects the application of the combined theory of punishment, which balances the element of retribution proportional to the victim's losses with the goal of rehabilitation for the perpetrator.

Overall, law enforcement against perpetrators of the crime of falsifying the origins of marriage based on practice in Indonesia, as illustrated in the *a quo* decision, at the normative level has a fairly clear legal basis, but in practice still faces various structural challenges. The characteristics of this offense, which sociologically functions like a complaint offense, makes the law enforcement process highly dependent on the initiative of the injured party to report. Proving the element of intent or the perpetrator's knowledge of the existence of obstacles to a valid marriage is also a crucial point that requires caution by law enforcement officials. In addition, the weak integration of population data and marriage registration systems between religious and government institutions, the disparity between the maximum penalty threat and the penalties imposed in practice, and the legal culture of society that still places the issue of the origins of marriage as a private matter, also contribute to factors that hinder optimal law enforcement against this offense.

4. CONCLUSION

Based on the analysis above, two conclusions can be drawn. First, the concept and regulation of the crime of falsifying the origin of marriage according to positive law in Indonesia is basically not formulated as a separate crime qualification with explicit legal nomenclature, but rather is spread and must be constructed from a combination of Articles 277 to 280 of the old Criminal Code, Law Number 1 of 1974 concerning Marriage and its amendments, and Law Number 24 of 2013 concerning Population Administration, which was then systematically updated into Articles 401 to 404 of Law Number 1 of 2023 concerning the National Criminal Code without changing the essence of protection against the principle of open monogamy and honesty of the origin of marriage. Second, law enforcement against perpetrators of this crime, as illustrated in Cibinong District Court Decision No. 260/Pid.B/2025/PN Cbi, has a clear legal basis at the normative level. However, in practice, it still faces structural challenges in the form of the offense's character resembling a complaint offense, difficulties in proving intent, weak integration of population data systems and marriage registration across institutions, and a legal culture that tends to position this issue as a private matter to be resolved amicably.

Suggestions: Lawmakers and policymakers are advised to formulate a more explicit definition of "marriage" in the context of offenses concerning the origin of marriage, including clarifying its scope for unregistered marriages, to reduce multiple interpretations in the application of Article 279 of the Criminal Code and its equivalent in the National Criminal Code. In addition, it is necessary to strengthen the integration of the population data system (Population Administration Information System/SIK) with the interfaith marriage registration system (Marriage Management Information System/SIMKAH and other religious institutions), so that the potential for falsification of marital origins can be prevented from the administrative stage. Law enforcement officials also need to be encouraged to be more proactive in handling this crime without solely relying on victim reports, as well as providing education to the public about the right to pursue criminal legal

channels, so that the legal culture that tends to resolve this issue amicably is no longer a major obstacle to upholding legal certainty and protection for the institution of marriage in Indonesia.

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