



The essence of marriage registration: Indonesians' urf perspectives

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ABSTRACT

Marriage registration in Islam is not a condition and pillar of marriage, but it often leads to legal consequences for unrecorded marriages (siri/unregistered marriage). These consequences may affect the status of children, the wife, inheritance, and other matters. To avoid such issues, laws have been established to regulate and legalize marriages, ensuring legal certainty. Law Number 22 of 1946 concerning Registration of Marriages, Divorces, and Reconciliation, as well as Law Number 1 of 1974, revised as Law Number 16 of 2019 concerning Marriage, clearly state the regulations for marriage. Marriage registration is crucial for ensuring the legal validity of a marriage event. According to the Jumhur Ulama, a marriage is considered valid if it fulfills the essential pillars and conditions, including the groom, the bride, guardians, witnesses, ijab and qabul (consent exchange), and dowry (Mahar). Marriages that do not meet these legal requirements are often referred to as private marriages, unregistered marriages, contract marriages, or mistresses. Marriage registration is of great importance in the study of marriage, both conceptually and operationally, as it is a legal requirement for marriage in Indonesia. The purpose of registering marriages and divorces is to facilitate state administration, ensuring that rights arising from the marriage, such as issuing birth certificates and family cards, require a marriage certificate as valid proof of the marriage event.

Keywords: Marriage Registration, Siri Marriage

1. INTRODUCTION

Jumhur Ulama (most Islamic scholars) explained that a marriage is considered valid if it fulfills the pillars and conditions, including: the groom, the bride, guardians, witnesses, ijab and qabul, and the dowry as the conditions for the validity of a marriage. A marriage can be recognized by the state, namely marriages that are registered with

marriage registrars, thus the legislation in Indonesia explains that the function of marriage registration is only to fulfill administrative matters, not to determine whether or not a marriage is legal. Registration of marriages is considered important as an effort to provide legal certainty for parties carrying out marriages. Besides that, marriages that do not meet the legal requirements are often referred to as private marriages, unregistered marriages, contract marriages, or mistresses. This kind of marriage is legal according to Islamic religious provisions, but it is not justified by the Marriage Law in the Republic of Indonesia (Hazairin, 1986: 5).

The rights related to the residence must be recorded, such as: birth, marriage, death, and so on. Likewise, marriages need to be recorded to prevent confusion in the future, so in Law Number 1 of 1974 Concerning Marriage in article 2 paragraph (2), it clearly states that "every marriage is recorded according to the applicable laws and regulations" (Nasution, 2009: 336). The compilation of Islamic Law (KHI) Article 5 paragraph (1) states that in order to ensure orderliness of marriage for the Islamic community, every marriage must be recorded. Therefore, the purpose of registration carried out before and under the supervision of a Marriage Registration Officer (PPN) is to ensure orderliness of marriages. The marriages carried out without the Marriage Registration Officer do not have legal force, because marriage can only be proven by a Marriage Certificate made by Marriage Registration Officer (PPN), (Compilation of Islamic Law). A marriage can only be proven by a marriage certificate made by a marriage registrar. If viewed from the perspective of marriage law in the Compilation of Islamic Law (KHI) contained in articles 5 and 6, it turns out that the legal elements and the elements of the procedure for recording are applied cumulatively. Even in Article 7 paragraph (1), it is stated that for people who will carry out marriages according to the Islamic law, it can only be proven by a marriage certificate made by a Marriage Registration Officer (PPN). Thus, the Compilation of Islamic Law (KHI) has stated that the element of registering a marriage is a requirement for a valid marriage. Siri and underhanded marriages (unregistered marriages) are legal, but they are not recognized by the state. As a result, children and wives from these marriages do not have legal status in the country.

The essence of marriage itself refers to the concept that without one of the pillars of marriage conditions, marriage is impossible to carry out. Whereas, what is meant by conditions is something that must exist in a marriage but does not include the essence of the marriage itself. If one of the conditions of the marriage is not met then the marriage is invalid (Talib, 1974:47). The pillars of marriage conditions are: (1) there is a potential groom; (2) there is a prospective bride; (3) guardian; (4) witnesses; (5) ijab and qabul; and (6) mahar or dowry. Therefore, the essence of marriage is fulfilling all the pillars of marriage conditions, while the marriage registration only aims to record the

marriage officially, and it does not determine whether the marriage legal or not in Islamic laws' perspectives ('Urf).

2. METHODS

This study examines the legal aspects of marriage that occur in the community, i.e., the marriage of Siri. The marriage is lawful or not in the view of Islamic law and the positive law that often becomes a polemic in society causes a negative impact on the parties involved both husband, wife, and children. This research is an empirical study through the study of social phenomena. The research data are the data obtained through observation and interviews which are then presented descriptively in order to provide an overview to all parties regarding the object under study.

3. RESULTS AND DISCUSSION

A marriage certificate is an authentic evidence in a marriage so that the marriage has legal legitimacy, even though in Islamic law it has also been anticipated by having a walimah (wedding party) and witnesses. A marriage certificate has two functions, namely as an administrative requirement and as a determination of whether or not a marriage is valid. Law Number 1 of 1974 which has been revised into Law Number 16 of 2019 concerning Marriage which is the codification and unification of marriage law in Indonesia which is National in nature which places Islamic law as having its own existence (Ali, 2007:27).

Marriages carried out without a registration procedure are known as underhanded marriages (siri/unregistered marriages). underhanded marriages according to the Marriage Law and Compilation of Islamic Law (KHI) do not have legal force, so the marriage is categorized as illegal, even though according to the religious concept it is legal and fulfills the requirements and pillars of marriage, but their rights are not guaranteed by the laws and regulations (Somad, 2012: 284). Thus, it is clear that it is the woman who will be the victim or the party who is harmed by an unregistered marriage. A husband and a wife who have children but their marriage is not registered and then they are going to make their child's birth certificate at the Civil Registration Office will experience difficulties because one of the administrative requirements that must be fulfilled is a copy of the parents' marriage certificate.

Marriage is to enter into a contract or agreement to bind oneself between a man and a woman to justify sexual relations between the two parties, on a voluntary basis and the consent of both parties to realize a happy family life filled with love and tranquility in various ways which is blessed by Allah SWT (Syarifuddin, 2006: 23). Marriage is a contract that unites two souls who love each other between a man and a woman and aims to build a household that is *sakinah*, *mawaddah*, and *warahmah*.

(Abdullah and Saebani, 2013:5). Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Belief in One Almighty God (Law No. 1 of 1974).

A new marriage can be said to be a valid marriage if it fulfills the requirements for marriage according to its religion and it is recorded according to the applicable laws and regulations as explained in the Compilation of Islamic Law (KHI) in Article 5 paragraph (1) stating that: "in order to ensure orderliness of marriage in Islamic society, every marriage must be recorded". Article 6 paragraph (2) and Article 7 paragraph (1) state that marriages carried out outside the supervision of a Marriage Registration Officer (PPN) have no legal force, Article 7 paragraph (1) which reads "Marriage can only be proven by a marriage certificate made by marriage registration officer", so marriages are considered valid according to the Marriage Law if they are registered.

According to the Law Number 22 of 1946 Concerning Marriage Registration in Article 1 paragraph (1), it states that "Marriage performed according to the Islamic religion, hereinafter referred to as marriage, is supervised by a marriage registration officer appointed by the Minister of Religion or an employee appointed by him, divorce and reconciliation carried out according to the Islamic religion, hereinafter referred to as divorce and reconciliation, shall be notified to the marriage registration officer. Therefore, it is necessary to register the marriage to the marriage registration officer.

Marriage Registration is the activity of administering wedding events as stated in article 1 paragraph (3) which reads "Marriage Registration Officer, hereinafter abbreviated as PPN, are the civil servants assigned by the Minister of Religion or employees appointed to carry out marriage registration for Muslim communities. Registration of marriage aims to create order in marriage in society. This is an effort regulated through legislation with the aim of protecting the dignity and sanctity (*misaq al-galid*) of marriage and more specifically the women in the household, (Basir, 2021: 54). Registration of marriages will have an impact on the survival of the future, especially the wife and children from their marriage relationship. Marriage registration in the view of Islamic law is basically a positive thing. The concept of marriage registration is a form of reform carried out in the field of Islamic family law.

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Indonesia which is National in nature which places Islamic law as having its own existence (Ali, 2007:27).

Registration is a state administration in order to create order and welfare of its citizens. Recording means entering the marriage in the marriage certificate book for each husband and wife. Basically, Islamic law that does not require registration of every marriage contract, but from the point of view of the benefits, registration of marriages is very necessary because every marriage registration that is carried out makes the marriage status strong or authentic according to the country.

The registration of marriages regulated in Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage is very urgent because it can guarantee protection and legal certainty for marriages and guarantee order in social life. Marriage registration essentially aims to provide legal certainty and protection for both parties (husband and wife), including legal certainty and protection against the consequences arising from the marriage itself, namely regarding the rights and obligations of each of them reciprocally regarding the children who were born.

Marriages carried out without a registration procedure are known as underhand marriages. Underhanded marriages according to the Marriage Law and Compilation of Islamic Law (KHI) do not have legal force, so the marriage is categorized as illegal, even though according to the religious concept it is legal and fulfills the requirements and pillars of marriage, but their rights are not guaranteed by the laws and regulations (Somad, 2012: 284). Thus it is clear that it is the woman who is the victim or the party who is harmed by an unregistered marriage. A husband and wife who have children but the marriage is not registered and they are going to make their child's birth certificate at the Civil Registration Officer will experience difficulties because one of the administrative requirements that must be fulfilled is a copy of the parents' marriage certificate.

Underhanded marriage is defined as "A form of marriage that is carried out only based on religious rules (laws) or customs, but it is not announced to the general public, nor is it officially registered at the Marriage Registration Office, namely the Office of Religious Affairs (KUA) for those who Muslims and the Civil Registration Office (KCS) for non-Muslims (Susanto, 2007:22). Underhanded marriages are marriages that do not implement the Law Number 1 of 1974 article 2 paragraph (2) where each marriage is recorded according to the applicable laws and regulations. This article has the meaning that every marriage that occurs must be recorded and reported to the state as one of the conditions for state administration. According to Law Number 22 of 1946 Concerning Marriage Registration in Article 1 paragraph (1), it states that "Marriage performed according to the Islamic religion, hereinafter referred to as marriage, is

supervised by a marriage registration officer appointed by the Minister of Religion or an employee appointed by him, divorce and reconcile carried out according to the Islamic religion, hereinafter referred to as divorce and reconciliation, shall be notified to the marriage registration officer."

According to the Regulation of the Minister of Religion Number 20 of 1999 concerning Registration of Marriages, in Article 1 paragraph (1), it reads "Recording of Marriages is the activity of administering marriage events". In article 1 paragraph (3), it states "Marriage registration officer, hereinafter abbreviated as PPN, is a civil servant assigned by the Minister of Religion or an employee appointed to carry out the registration of marriages in the Islamic community" with the aim of providing legal certainty.

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