

Marriage registration procedures and its legal impacts

(Prosedur pencatatan pernikahan dan dampak hukumnya)

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Abstract

This article aims to review the procedures for registering marriages and the legal impacts of registering marriages, as well as the negative impacts arising from marriages that are not registered. Marriage registration is one of the essential requirements for the validity of a marriage; this is because a registered marriage can provide legal certainty to the parties involved in the marriage, including husband, wife and children, regarding the rights arising from the marriage, such as inheritance rights, the right to obtain a birth certificate, the right to a living wage, and so on cannot be obtained if the marriage is not registered/not legal. Marriages that are not registered (nikah sirri) are not valid according to state law and harm the status of children. The status of children born through unregistered marriages is illegitimate in state administration, so they will have difficulty obtaining marriage rights.

Keywords: procedure, registration, marriage, legal impact

Abstrak

Artikel ini bertujuan untuk mengulas tata cara pencatatan perkawinan dan dampak hukum dari pencatatan perkawinan serta dampak negatif yang ditimbulkan dari perkawinan yang tidak dicatatkan. Pencatatan perkawinan merupakan salah satu syarat penting bagi sahnya suatu perkawinan, hal ini dikarenakan perkawinan yang dicatatkan dapat memberikan kepastian hukum kepada pihak-pihak yang terlibat dalam perkawinan tersebut baik suami, istri maupun anak mengenai hak-hak yang timbul dari perkawinan tersebut, seperti hak waris. Hak untuk mendapatkan akta kelahiran, hak untuk mendapatkan nafkah, dan lain sebagainya tidak dapat diperoleh apabila perkawinan tersebut tidak dicatatkan/tidak sah. Pernikahan yang tidak dicatatkan (nikah sirri) tidak sah menurut hukum negara, dan berdampak negatif terhadap status anak. Status anak yang dilahirkan melalui perkawinan yang tidak dicatatkan tidak sah secara administrasi negara sehingga akan mengalami kesulitan untuk mendapatkan hak-hak dalam perkawinan tersebut.

Kata Kunci: Prosedur, Pencatatan, Perkawinan, dan Dampak Hukum

A. Introduction

Marriage is a worship prescribed in Islam. This is carried out to obey Allah's commands so that humans, with their biological needs, do not fall into the valley of Zina. In Islamic law, marriage is worship that begins with a solid contract or *mitsaqon gholiidhan* to fulfil Allah's command, so carrying it out is considered an act of worship. Indonesia has guaranteed every

citizen through the Constitution of the Republic of Indonesia that every person has the right to form a family and continue their offspring through legal marriage. The government has regulated marriage through several legal regulations, one of which is Law Number 1 of 1974 concerning Marriage, to be precise in articles 1 and 2 of Law Number 1 1974 concerning marriage.

article 1

Marriage is an inner and outer bond between a man and a woman as husband and wife, to form a family or household that is happy and eternal and based on the Almighty God.

Section 2

- ⓐ Marriage is valid if it is carried out according to the laws of each religion and belief.
- ⓑ Every marriage is recorded according to applicable laws and regulations.¹

Marriage is a social bond forming a legal agreement between one legal object and another. Typically, marriages are held and formalized with an event called a wedding reception.² Marriage services are held to form a family that is *sakinah mawaddah* and *rahmah*. On the other hand, unregistered marriage for most people is defined as a marriage that is not held at a public reception or more interpreted as a marriage that is only valid religiously in accordance with the terms and pillars of marriage but is not declared publicly and is not registered before the state so that it is only religiously valid.

Juridically, what is meant by marriage is, according to Law Number 1 of 1974, "The inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on belief in the Almighty God. In the Compilation of Islamic Law Chapter II with a discussion of the Basics of Marriage, specifically Article 5, it is stated that:

Article 5

- (1) In order to ensure orderly marriages in Islamic communities, marriages must be recorded.
- (2) Registration of marriages, as stated in paragraph (1), is carried out by marriage registrar employees as regulated in Law Number 22 of 1946 in conjunction with Law Number 32 of 1954

The existence of Article 2 paragraph (2) of the Marriage Law No. 1 of 1974 provides a strict provision as a dividing line that a valid marriage in the view of the state is a marriage

¹Law Number 1 of 1974

²Ahmad Rofiq, Islamic Civil Law in Indonesia (Depok:Rajawali Pers, 2017) p.79

performed in the presence of an authorized employee so that it is recorded in the records of an official institution. In this article, the author will discuss the status of marriage registration and its legal impacts.

B. DISCUSSION

1. Marriage Registration According to Law Number 1 of 1974

Based on the provisions for marriage registration contained in Law Number 1 of 1974, specifically Articles 1 and 2, if interpreted grammatically, at least two opinions respond to this article. The first opinion states that marriages that are not registered are not valid in state law, while the second opinion states that marriages that are not registered or registered have a correlation with the validity of a marriage.³

Subjectively, marriage is a legal event whose legality is not only regulated by religion but also regulated by the state. However, this is because, in Law Number 1 of 1974 concerning marriage, there is no confirmation whether marriage is just an "administrative registration", which does not affect whether it is valid. Whether or not the marriage has been solemnized according to their respective religions or beliefs.⁴ Alternatively, the registration affects whether the marriage is valid or not. However, as a form of follow-up to marriage registration, the government has regulated further mechanisms related to marriage registration in the Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974

Section 2

1. Marriage registration of those who enter into marriage according to the Islamic religion is carried out by a registrar as intended in Law Number 32 of 1954 concerning the registration of divorce and reconciliation marriages.
2. Registration of marriages of those who enter into marriage according to their religion and belief other than Islam is carried out by marriage registrar employees at the civil registration office as intended in various laws regarding marriage registration.⁵

The function and position of marriage registration is to guarantee legal order, which functions as an instrument of legal certainty, convenience, and proof of marriage.⁶

³Liki Faizal, Legal Consequences of Marriage Registration, Sharia Journal: Vol 5, NO 3, August 2017, p.9

⁴Simanjuntak, Indonesian Civil Law Yogyakarta: Kencana Pres, 2018. H 153

⁵See Government Regulation Number 7 of 1975

Apart from that, based on Article 1 of the Marriage Law No. 1 of 1974, which stipulates that marriage is based on belief in one Almighty God, the following two things can be interpreted:

a) In the Republic of Indonesia, which is based on Pancasila, "Marriage Laws" are contrary to Islamic teachings and rules for Muslims and for people who are Christians, Hindus, Buddhists and Confucians may not occur and apply. Hu Cu cannot occur and apply marriage laws that are contrary to their religious teachings and rules.

b) The Republic of Indonesia must implement the Shari'a or Islamic Marriage Law for Muslims. Likewise, for Christians, Hindus, Buddhists and Confucians, the state must carry out marriage laws according to their religion. To carry out the Marriage Law requires assistance or a State intermediary.

It can be concluded that although the state only strictly regulates the technicalities of marriage, which must be in accordance with the teachings of each religion, and does not provide explicit legal provisions regarding marriage registration, marriage registration has a critical position in the context of the legal and administrative needs of a husband and wife.

The author believes that birth registration, death registration, and marriage registration per the Elucidation of Article 2 paragraph (2) of Law Number 1 of 1974 need special attention, intending to obtain legal consequences and legal relations from the marriage registration. Marriage as a legal event is determined by religion. It is necessary to remember that the function and position of marriage registration is to guarantee legal order, which functions as an instrument of legal certainty, legal convenience, and a means of proof of marriage.

Apart from that, marriage registration also functions as a means to examine the parties entering into a marriage to enforce the marriage according to the law.

2. Legal Impact of Marriage Registration

Marriage registration contains benefits, advantages, and great goodness in people's lives, so regulations are needed. If a marriage is not regulated through statutory regulations or registered, it will be misused by the parties entering into the marriage with improper personal goals or interests and harming other parties, especially the wife and children.

⁶Muhammad Nasir, Resistance of Aceh Tamiang Dayah Ulama Against Women's Rights in KHI, MIQTT, Vol.XLI No 1 January 2017, p.51

The things that determine the validity of a marriage are based on the conditions determined by religious law or the religious beliefs of the prospective bride and groom. In this regard, to create a level of internal synchronization of the legal regulation of marriage registration in Law 1/1974, it is necessary to carry out internal harmonization of the legal regulation of marriage registration so that consistency in the legal regulation of marriage registration can be guaranteed.

Marriage registration has been an issue since the initial formation of the Draft Marriage Law (RUUP) in 1973, which became Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1,. This is related to the meaning of the law.⁷Provisions for marriage registration are regulated in Article 2 of Law 1/1974, which states: (1) Marriage is valid if it is carried out according to the laws of each respective religion and belief. (2) Every marriage is recorded according to the applicable laws and regulations. From the provisions of Article 2 of Law 1/1974, every marriage must be recorded according to the applicable laws and regulations. This means that every marriage must be followed by registration of the marriage according to applicable laws and regulations. Suppose the two paragraphs in Article 2 of Law 1/1974 are connected. In that case, it can be considered that marriage registration is an integral part that also determines the validity of a marriage, in addition to following the terms and conditions of marriage according to the laws of each religion and belief.

Although marriage registration does not affect whether a marriage is valid or not, marriage registration has a very complex impact on the legal needs of husband and wife in the future, including the following:

1. The marriage is considered invalid in state law because it is not registered in an official institution, so it will harm both parties, both husband and wife and the children and make it challenging to fulfil administrative and legal needs.
2. Although a marriage is valid if carried out in accordance with religious regulations, in the view of the state administration, marriages that are not registered at the Office of Religious Affairs are considered invalid.
3. Children only have a civil relationship with their mother and their mother's family. So, the fatal consequence is that the wife or children do not have the right to claim support and inheritance from their father.

⁷Neng Djubaidah, Registration of Marriages and Unregistered Marriages According to Written Law in Indonesia and Islamic Law, Sinar Graphics, Jakarta, p. 1. Vol. 14 No. 03 - September 2017 : p.254

However, in the latest jurisprudence, the Constitutional Court Decision No.46/PUU-VIII/2010⁸ decided that children born outside a legal marriage (Siri marriage) have a civil relationship with their father. They can prove the blood relationship between the child and the father based on scientific, technological, or other legal evidence. However, the Constitutional Court's decision does not have legal implications, either annulling or cancelling the provisions of the marriage registration law as regulated in Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage so that the position of marriage registration remains a legal requirement for a marriage to be valid in the eyes of the state.⁹

Administrative registration, which states that the marriage event existed and occurred. By registering the marriage, it becomes clear, both for the person concerned and the other parties. A marriage not registered in the Marriage Certificate is considered non-existent by the state and does not receive legal certainty. Likewise, all consequences arising from the marriage are not recorded.

The purpose of registering a marriage is to provide certainty and protection for the parties entering into a marriage, to provide authentic evidence that a marriage has occurred, and the parties can defend the marriage to anyone before the law. On the other hand, if the marriage is not recorded, the marriage between the parties will not have legal force and proof.

C. Closing

Conclusion

Based on the description above, it can be concluded that women are not considered legal wives, so they do not have the legal right to receive a living and inheritance when they leave this world. Furthermore, you do not get the right to go back and forth when you divorce because the marriage is considered to have never occurred. Even though the applicable regulations include law No. 1 of 1974 concerning Marriage or the Compilation of Islamic Law (KHI). The obligation to register marriages is not explicitly explained, so it does not affect whether a marriage is valid. However, registering a marriage must be done because it will give rise to many legal events that will affect the two objects that have a legal relationship in the marriage bond.

⁸See Constitutional Court Decision Number 46/PUU-VIII/2010

⁹Pahlevi, Implications of Constitutional Court Decision Number 46/PUU-VIII/2010 on Children from Siri Marriages, Journal of Legal Sciences, Jambi 2015, p.65

BIBLIOGRAPHY

- Ahmad Rofiq, *Hukum Perdata Islam Di Indonesia* Depok:Rajawali Pers, 2017
- Harpani Matnuh, *Perkawinan dibawah tangan dan akibat Hukumnya Menurut Hukum Perkawinan Nasional*:Mimbar Hukum: volume 6,NO 11 Mei 2017
- Kompilasi Hukum Islam
- Liki faizal, *Akibat Hukum Pencatatan Perkawinan*, Jurnal Syariah: Vol 5, NO 3, Agustus 2017
- Muhammad Nasir, *Resistensi Ulama Dayah Aceh Tamiang Terhadap Hak Hak Perempuan Dalam KHI*, MIQTT, Vol.XLI No 1 Januari 2017
- Neng Djubaidah, *Pencatatan Perkawinan dan Perkawinan Tidak Dicatat Menurut Hukum Tertulis di Indonesia dan Hukum Islam*, Sinar Grafika, Jakarta, hlm. 1. Vol. 14 No. 03 - September 2017
- Pahlevi, *Implikasi Putusan MK NO 46/PUU-VIII/2010 Terhadap Anak Dari Perkawinan Siri*, Jurnal Ilmu Hukum, Jambi 2015.
- Peraturan Pemerintah Nomor 7 Tahun 1975
- Putusan MK NO 46/PUU-VIII/2010
- Simanjuntak, *Hukum Perdata Indonesia* Yogyakarta:Kencana Pres, 2018
- Undang Undang Nomor 1 Tahun 1974

