

Impact of Constitutional Court Decree Number 46/PUU-VII/2010 on marriage registration

(Dampak Putusan Mahkamah Konstitusi Nomor 46/PUU-VII/2010 terhadap pencatatan perkawinan)

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Abstract

Indonesia is a country with a majority Muslim population. Consequently, in matters regarding marriage arrangements, especially marriage, many laws and regulations regulate them. One of the issues regulated in statutory regulations is regarding marriage registration. Marriage registration is not regulated in Law Number 1 of 1974, which is also the source of law for other laws and regulations regarding marriage registration. The purpose of writing this article is to determine the validity of marriages that were not registered after the Constitutional Court Decision Number 46/PUU-VIII/2010, as well as to analyze the legal consequences of marriages that were not registered. Based on an analysis of the legal materials obtained, marriages not registered after a Constitutional Court Decision are valid as long as they fulfil the requirements and harmony of a valid marriage. A marriage that is not registered also has legal consequences for the status of the wife, the position of the children, and joint assets (*gono-gini*) in the marriage.

Keywords: legal impact, Constitutional Court, marriage registration

Abstrak

Indonesia merupakan negara dengan mayoritas penduduk beragama Islam. Sebagai konsekuensinya, dalam hal-hal yang berkaitan dengan pengaturan perkawinan, khususnya perkawinan, terdapat banyak peraturan perundang-undangan yang mengaturnya. Salah satu hal yang diatur dalam peraturan perundang-undangan adalah mengenai pencatatan perkawinan. Pencatatan perkawinan tidak diatur secara jelas dalam Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, yang juga menjadi sumber hukum bagi peraturan perundang-undangan lainnya mengenai pencatatan perkawinan. Tujuan dari penulisan artikel ini adalah untuk mengetahui keabsahan perkawinan yang tidak dicatatkan pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010, serta menganalisis akibat hukum dari perkawinan yang tidak dicatatkan. Berdasarkan analisis terhadap bahan hukum yang diperoleh, keabsahan perkawinan yang tidak dicatatkan pasca Putusan Mahkamah Konstitusi adalah sah sepanjang memenuhi syarat dan rukun perkawinan yang sah. Perkawinan yang tidak dicatatkan juga membawa akibat hukum terhadap status istri, kedudukan anak, dan harta bersama (*gono-gini*) dalam perkawinan.

Kata kunci: akibat hukum, Mahkamah Konstitusi, dan Pencatatan Perkawinan

INTRODUCTION

Explanations of marriage regulations are contained in the articles in the UUP. Article 2, paragraph (1) of the UUP states, "Marriage is valid if it is carried out according to the laws of each respective religion and belief." Meanwhile, Article 2 paragraph (2) of the UUP regulates: "every marriage is recorded per applicable laws and regulations". In carrying out a marriage, the conditions and pillars of a valid marriage must be implemented to be considered valid. In statutory regulations, one of the conditions for a marriage to be legal according to the state is that the marriage be registered. So the legal consequences of a marriage that is not registered, even though according to religion or belief it is considered valid, a marriage carried out outside the knowledge and supervision of the marriage registrar's staff does not have permanent legal force in the eyes of State law, especially in the event of a marriage break-up or divorce and other problems. Others in a marriage. A marriage that is not registered can also be called a *Sirri* marriage. In other words, the marriage is not witnessed by many people and is not carried out in the presence of a marriage registrar. The marriage is considered legal according to religion but violates government regulations (Djoko Prakoso, 1987)

In one case of a marriage that was not registered, referring to the Constitutional Court Decision number 46/PUU-VIII/2010. This decision has consequences for an illegitimate child's relationship with his or her biological father and the existence of rights and obligations between illegitimate children and their biological father, both in the form of maintenance, inheritance and so on. This applies if proof is first carried out through science and technology, such as DNA testing and so on, which states that it is true that the illegitimate child is related to the man as his biological father. Whether a marriage is valid will still cause problems when the marriage breaks up. Given these problems, in this research, the author wants to know the validity of unregistered marriages, which are legal according to each religion's and belief's laws, after the Constitutional Court Decision Number 46/PPU-VIII/2010 (Setiawati, 2005).

This type of research is Normative Juridical research. Normative Juridical Research is discovering legal rules, principles and doctrines to resolve the legal issues. Furthermore, the author's research approach uses the statutory approach method by approaching statutory regulations. The conceptual approach is carried out by understanding family law concepts and the case approach in this research using cases (Marzuki, 2009).

Discussion

A. The Validity of Unregistered Marriages After Constitutional Court Decision Number 46/PPU-VIII/2010

The Validity of Marriages That Are Not Registered After Constitutional Court Decision Number 46/PPU-VIII/2010 In Indonesia, provisions relating to marriage have been regulated in state laws and regulations which specifically apply to Indonesian citizens. Society needs regulations to regulate marriage. In principle, a marriage that is not registered is a marriage that does not comply with state legal regulations that apply positively in Indonesia. Furthermore, therefore, marriages that are not registered do not have legal certainty and force and are therefore not protected by law (Prodjodikoro, 1974).

The marriage regulations referred to are in law, namely the UUP and its implementing regulations in the form of Government Regulation Number 9 of 1975. This law is the material law of marriage, while the formal law is stipulated in Law Number 7 of 1989 in conjunction with Law Number 3 of 2006 concerning Religious Courts. The Material Law that has been in force in the Religious Courts is Islamic Law, which generally covers the fields of law. Meanwhile, a complementary rule which will serve as a guide for judges in Religious Court institutions is the KHI in Indonesia, established and disseminated through Presidential Instruction Number 1 1991 Concerning the Compilation of Islamic Law (Mulyo, 2002).

The problem of registering marriages that are not carried out does not interfere with the validity of a marriage that has been carried out in accordance with Islamic law because it only concerns administrative aspects. If a marriage is not registered, then the husband and wife do not have authentic proof that they have carried out a valid marriage. As a result, seen from a juridical aspect, the government did not recognize the marriage. So, it has no legal force; therefore, the marriage is not protected by law and is even considered invalid/never existed (MK, 2010).

In marriages that are not registered, researchers have opinions regarding this matter. The first opinion is that this violates the law because they see and understand UUP Article 2 paragraph (2) and PP Number 9 of 1975 Article 2-3 and Article 45. Opinions, secondly, that a marriage that is not registered is not a violation of the law or statute. This opinion is based on Article 2, paragraph (1) of the UUP, and while marriage registration is an administrative requirement for a marriage. The differences of opinion expressed by researchers that underlie

these opinions regarding the validity of marriage originate from the separation of provisions regarding the obligation to carry out marriages according to one's religion and beliefs (religion) and the obligation to register marriages, which are in different paragraphs but are still in article 2 of the UUP. Marriage registration is not rejected and is even considered necessary. However, it is not considered the main requirement for the validity of marriage because there is concern that due to the existence of rules that are considered unequal between Islamic law and state law regarding the validity of marriage, there will be Muslim communities who are unfamiliar with the rules. Moreover, knowledge that misinterprets the contents of Article 2, paragraph (1) of the UUP will result in marriages by mere registration being considered valid by civil law but not valid according to Islamic law (Hasan, 1987).

In Constitutional Court Decision Number 46/PUU-VIII/2010, religious norms have been ignored by coercive interests, namely legal norms. According to legal norms, the Petitioner's marriage, which was already valid based on the pillars of marriage and Islamic religious norms, is invalid because it is not registered according to Article 2 paragraph (2) of the Marriage Law (Saleh, 1976). That per the provisions of Article 2 paragraph (1) of Law Number 1 of 1974 concerning marriage (in the future referred to as the Marriage Law for short) states that: "Marriage is valid, if it is carried out according to the laws of each religion and belief", the essence of the marriage problem which is not registered because the articles in the statutory regulations regarding marriage registration are less effective and firm, for example, article 2 paragraph (2) in the UUP, the reason is that this article can also be considered ambiguous, namely in the article it is not clarified whether it is just administrative registration which is not influences the validity or not of the marriage that has been solemnized according to their respective religions and beliefs, or whether the registration influences the validity of the marriage or not. Due to the existence of religious and legal norms in the same legislation, they can weaken each other and even conflict. This potential occurs in Article 2, paragraphs (1) and (2) of the UUP. According to researchers, the provisions contained in Article 2 paragraph (2) of the UUP are norms that contain legality as a formal form of marriage. A marriage that is not registered in accordance with the provisions of statutory regulations can be interpreted as a marriage event that does not fulfil formal requirements, so this has implications, especially for civil rights arising from the consequences of the marriage, including children born from marriages that are not registered in accordance with the provisions of the regulations. The researcher considers that marriages that have not been registered can be registered or request a Marriage Itbat from the Religious

Court, especially Muslim ones. However, the Religious Court can only grant it if the harmony and conditions of the marriage that the husband and wife have entered into have been fulfilled and carried out correctly. The reasons for marriages not being registered are influenced by the weak legal meaning regarding marriage registration in statutory regulations, which has resulted in several articles regarding marriage registration being ignored (Saepudin, 2013).

The conditions determined by the religion of each prospective bride and groom determine the validity of a marriage. Meanwhile, the mandatory registration of marriages by the state through statutory regulations is an administrative obligation. According to the explanation above, the researcher concludes that firstly, registration is meant as a limitation and regulation that must be carried out because it does not conflict with constitutional provisions because restrictions resulting from marriage registration are determined by the law and are carried out to guarantee recognition of the rights and freedoms of other people, and to fulfil fair demands in accordance with existing moral considerations, religious values, security and public order in a society. Second, administrative registration carried out by the state is intended to ensure that a marriage, which is held as the most important legal act in life, which has implications for the occurrence of pervasive legal consequences and many in the future can be proven with accurate evidence with an authentic deed so that protection and services provided by the state regarding the rights and obligations arising from marriage can be carried out effectively and efficiently (Al-Hamdani, 1989).

B. Legal Consequences of Unregistered Marriages

1) The Position of the Wife: According to Islamic Law, marriages that are not registered, which are included in unregistered marriages, are valid, but marriages that are not registered are not recognized by the state, resulting in various problems, especially household problems, including if there is a breakdown of the marriage which results in prosecution of rights during the marriage. (inheritance or meeting children's needs) cannot be guaranteed by the state. It can only be resolved through deliberation or custom. Another consequence of a marriage that is not registered has an impact on the wife, namely that the wife does not receive benefits if the husband dies, such as the *raharja* service allowance, if the husband works as a civil servant or civil servant, the wife does not receive marriage benefits or retirement benefits from the husband (Indonesia, 1995).

2) The Position of Children Since the issuance of the Constitutional Court Decision Number 46/PUUVIII/2010 in the ruling section it is stated that article 43 paragraph (1) of the UUP (State Gazette of the Republic of Indonesia of 1974 Number 1, Supplement to the State Institution of the Republic of Indonesia Number 3019) which states, children who born out of wedlock only has a civil relationship with his mother, and his mother's family, does not have binding legal force as long as it is interpreted as eliminating a civil relationship with a man who can be proven based on science and technology and/or other evidence according to law turns out to have a blood relationship as his father , so that the paragraph must be read "a child born out of wedlock has a civil relationship with his mother and his mother's family as well as with a man as his father who can be proven based on science and technology and/or other evidence according to law to have a blood relationship, including blood relations. civil law with his father's family."(Rofiq, 1995)

3) Joint Property (Gono-Gini) in Marriage. The legal impact of a marriage not being registered if a divorce occurs in the future makes it difficult for the wife to obtain rights to their joint property if the husband does not provide. Apart from that, if the husband leaves an inheritance because the husband dies, it is also challenging for the wife and children to obtain rights to the inheritance. The reason is that their marriage does not have an authentic certificate, so their interests are not protected by law (Ghazaly, 2003).

CLOSING

The validity of marriages not registered before the Constitutional Court Decision number 46/PPU-VIII/2010, following the issuance of the MUI Fatwa, namely, marriages that were not registered were classified as valid unregistered marriages according to Islamic law. Some people believe that unregistered marriages or unregistered marriages, including the absence of marriage registration, are considered invalid. Hence, a fatwa from the Islamic Ulema Council (MUI) issued in 2006 stated that "unregistered marriages are valid as long as the aim is to build a household. "Marriage under the hand is legally valid if the conditions and harmony of marriage have been fulfilled, but it is haram if it causes harm or negative impacts." The validity of marriages that are not registered after the Constitutional Court Decision Number 46/PPU-VIII/2010: marriages are still valid in religious law's eyes but do not have legal force in the eyes of state law. The Constitutional Court's decision states that marriage registration is administrative registration, which does not affect whether or not a marriage is not registered. This reason is also contained in the general explanation of Article

4 of the UUP. The solution for Muslim married couples who cannot prove that the marriage occurred with a marriage certificate is to apply for a Nikah Itsbat (determination or legalization of marriage) to the Religious Court (found in Article 7 of the KHI). However, the Nikah haya Itsbat is only possible if it concerns:

- a. In order to settle the divorce.
- b. Loss of marriage certificate.
- c. There are doubts about whether one of the marriage conditions is valid.
- d. The marriage occurred before the enactment of the UUP.

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