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Implications of Unregistered Marriage for Women: Profitable or Detrimental

Alfiya Wicaksono

Faculty of Law, Universitas Merdeka Pasuruan

e-Mail: alfiyawicaksono@gmail.com

Abstract:

In Islam, marriage is a form of worship recommended by the Prophet Muhammad, so that the law is Sunnah. Marriage is something very sacred where a man and woman are united by a marriage bond and become a couple as husband and wife. Marriage is declared valid if it is carried out following religious law. In Indonesia, exist the term unregistered marriage. An unregistered marriage is a marriage carried out based on their religious beliefs, but there is no state registration. However, Indonesia's law considers marriage invalid if the related registrar institution does not register the marriage, even though it has carried out a marriage procession according to its religious law. This certainly has implications, both positive and negative, for couples, especially women. This is a normative legal research. The result of this study is it can be concluded that unregistered marriage is very detrimental to women.

Keywords: *Unregistered Marriage; Law; Detrimental.*

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INTRODUCTION

In fact, in Indonesia, it is not uncommon for couples to carry out unregistered marriages. An unregistered marriage is a marriage carried out based on their religious beliefs, but there is no state registration, so they do not get a marriage book. This creates a big question about the implications or consequences of an unregistered marriage. Therefore, this article will discuss the factors behind or the motive of a person choosing to carry out an unregistered marriage, then discuss the fundamentals of an unregistered marriage from a religious perspective and from a legal perspective that applies in Indonesia to its implications, especially for women.

Marriage is not a strange thing to hear in Indonesian society. Marriage is something sacred, where a man and woman create a strong bond to produce a lot of good for each partner, relatives, children and grandchildren, and even the community.¹ The bond that is created is a physical and mental bond with an inner emotional bond. Most couples

¹ Choiruddin, "Analisis Yuridis Terhadap Kebijakan Kepala Desa Yang Menambah Usia Nikah Kepada Calon Suami Istri Yang Belum Cukup Umur di Desa Bareng Kecamatan Sekar Kabupaten Djojonegoro" UIN Sunan Ampel Surabaya, 2013 80.

marry based on mutual love and perform the sunnah worship recommended by the Prophet. In a marriage, it is hoped that the presence of the baby. Besides, couples are also expected to become happy families that achieve physical and spiritual prosperity with God Almighty's blessing.

In etymology, marriage derived from the language Arabic that has the same meaning as *zawaj* that later in Indonesian language called by mating. When viewed from an intrinsic or proper perspective, marriage means pressing, gathering, or combining. Meanwhile, when viewed from a metaphoric or figurative sense, marriage means having intercourse with a contract. In terminology, marriage is a physical and mental bond between a man and a woman in a household-based on religious guidance or the status of an agreement or contract between a man and a woman to legalize bodily relations as a legal husband and wife partner and contains terms and conditions which has been determined by Islamic law. Meanwhile, Law no. 16 of 2019 concerning marriage states that marriage is a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the One Godhead.

Meanwhile, in terms of fiqh science, Unregistered marriage is based on the husband's message; the witnesses keep it a secret for his wife or congregation, even if the local family. Based on the above understanding, it can be concluded that unregistered marriage is a marriage that is carried out secretly or hiddenly without being known or recorded in state institutions. Thus, an unregistered marriage is a marriage between a female and a man and witnessed by two witnesses but not reported or recorded at the Office of Religious Affairs (KUA).

RESEARCH METHOD

This is normative legal research with a statutory approach, because the discussion in this study will refer to the Law in Indonesia, especially Law and Government Regulation about marriage

DISCUSSION

In a marriage that is carried out unregistered, there are surely factors behind it. Such as: **Economic Factors**. Lower middle-class people who are unable to meet the cost of registration of marriage. Sometimes the cost of registering for a marriage can be double the actual cost. This happened because there was an irresponsible KUA party.

Age Factor. Based on Law no. 16 the Year 2019 on the Amendment of Law no. 1 of 1974 regarding Marriage, Article 7 paragraph (1) and (2), reads as follows: Marriage is only permitted if the couple have reached 19 (nineteen) years old. In the event of deviation from the age requirement, as stipulated in paragraph (1), the male and/or the woman's parents may request dispensation to the Court because they are very

urgent accompanied by sufficient supporting evidence. Related provisions age above encourages unregistered marriage since the bride and groom do not have enough period and do not want to bother taking care of it on the Court. In this case, there is an influence from economic factors. Sometimes families with daughters marry off their children at an early age to reduce the family burden.

Work Bonding Factors. Some companies or service agencies enforce regulations not to marry within a certain period. It is this work or service association that encourages people to carry out marriages independently.

Free Promiscuity Factors. Over time, cultural influences from the west began to enter Indonesia. As a result, many societies between men and women ignore religious norms and prohibitions, who dare to have sexual relations outside of marriage, resulting in pregnancy outside of marriage. Pregnancy outside of marriage is a family disgrace that can damage the family's image. Sometimes a man already has a wife but has sex with another woman who is not his wife, and the woman becomes pregnant. So as a form of male responsibility, they done the unregistered marriage without the wife's prior knowledge. If the first wife finds out, it is suspected that it will cause a dispute that will complicate matters. So that the marriage becomes an alternative to polygamy to 'secure' the household with the previous wife

Social Factors. Sometimes in a specific society, there is a negative stigma against polygamous men so that a man who has a desire for polygamy decides to do an unregistered marriage.²

Lack of Understanding of the Importance of Formal Marriage. Their contention that the unregistered marriage is declared invalid will not bother them to register because such marriage is done at the Prophet's time. People who underestimate marriage registration by the KUA do not know the consequences of unregistered marriage. This lack of public awareness is what causes unregistered marriages to exist increasingly in Indonesia. Whereas in the Al-Quran, it has been emphasized that a couple wishing to marry is obliged to record their marriage. The principle of registering an announcing marriage means that marriage secretly or unregistered marriage is not allowed.³

Unregistered Marriage in Islamic Perspective

The term unregistered marriage has been known among scholars since the priest Malik bin Anas; it's just that an unregistered marriage carried out in the past has a different meaning from an unregistered marriage present. In the past, unregistered marriage was defined as a marriage that still fulfils the pillars of marriage and its

² Rihlatul Khoiriyah, "Aspek Hukum Perlindungan Perempuan dan Anak dalam Nikah Siri" *Sawwa: Jurnal Studi Gender*. 12.3 (2018): 397.

³ Budiono, "Nikah Siri dan Keadilan Sosial" *Al-Qanun: Jurnal Pemikiran dan Pembaharuan Hukum Islam*. 17.2 (2014): 328.

requirements according to the Shari'a.⁴ However, those involved in the marriage and the witnesses agreed to keep it a secret or not notify the public about this intention. So, there is no walimatul 'ursy event. Unregistered marriage is understood as a marriage that is carried out according to the conditions of marriage in Islamic law but does not record the marriage on the institution that deals with marriages in Indonesia.⁵

Unregistered Marriage in Indonesian Law Perspective

States that the Compilation of Islamic Law (KHI), as a positive state legal institution for Muslims in Indonesia, does not recognize the term unregistered marriage. KHI only recognizes marriages that are registered and marriages that are not registered. Based on Law No. 2 of 1946 concerning the Registration of Marriage, Divorce, and Referral, which reads as follows:

- a. A Marriage Registration Officer supervises marriage;
- b. A spouse who performs a marriage without the supervision of a marriage registration employee is subject to punishment because it constitutes an offence.

Marriage registration aims to provide legal certainty and, of course, legal protection, especially for women. From the above statement, it can be concluded that unregistered marriage is considered illegal because the Marriage Registration Officer does not record it. There is also a law that states that unregistered marriage is an unlawful act. Even though it is declared valid according to fiqh science, it is still not valid according to state law.

Positive Impact of Unregistered Marriage

With an unregistered marriage, the parties' interests behind an unregistered marriage can be covered; for example, because of pregnancy outside of marriage, the unregistered marriage is carried out, the disgrace in the family can be covered. Likewise, for example, due to an official bond or work bond, a person can do his / her wish to get married even though he is in the period of an official bond or work bond.⁶

Even though unregistered marriage can supposedly impact women, it turns out the women also had a positive effect. The positive impact is the reduced burden on women earning a living, fulfilling their daily needs, or as their family's backbone. Third, this marriage can also eliminate the worry of adultery, given that promiscuity is increasingly rampant in the present. That's what becomes one's background, both men are already married and women who are still underage, so do not fall into a black circle of adultery. The best solution for them at that time is to carry out unregistered

⁴ Happy Susanto, *Nikah Siri Apa Untungnya* (Jakarta: Visimedia, 2005) 77.

⁵ Arsal, "Nikah Siri dalam Tinjauan Demografi" *Sodality :: Jurnal Sosiologi Pedesaan*. 6.2 (2012): 60.

⁶ Siti Ummu Adillah, "Analisis Hukum Terhadap Faktor-Faktor Yang Melatarbelakangi Terjadinya Nikah Sirri Dan Dampaknya Terhadap Perempuan (Istri) Dan Anak-Anak" *Jurnal Dinamika Hukum*. 11.Edsus (2011): 104.

marriages. This follows the hadith narrated by Bukhari and Muslims, which explains that the union aims to protect oneself from adultery. There is no worry about sin that can be obtained from infidelity; not only that, unregistered marriage can also make someone fulfil their desires, where it turns out that intimate relationships between husband and wife can create health in several human organs.

Negative Impact of Unregistered Marriage

An unregistered marriage's implication affects all those involved in the union, namely men, women, and children. Although there are positive implications, there are negative implications also of unmarried marriages, especially for women. Negative Implication such as:

1. A woman whose marriage is Unregistered tends not recognized as a wife because, by the law of nations, marriages were made invalid, and no marriage certificate as proof. Suppose he married an irresponsible man. In that case, the woman will be easily dumped or not regarded as a wife, and the absence of proof of authenticity makes women unable to do anything;
2. When a man is married in unregistered, especially when he already has a legally married wife, the woman is threatened that her rights will be neglected. Sometimes, a man who have unregistered married without his wife's knowledge, when within a certain period he will tend to return to his official wife. So that women as unregistered wives will be neglected. Based on the science of fiqh, herein lies the haram caused by the existence of an unregistered marriage when a husband persecutes his wife;
3. When the husband dies, then as an unregistered wife, the woman does not have the right to inheritance and share the assets. However, regarding a husband who dies, if the man is a responsible husband, he will make and administer a statement beforehand so that his wife will get a share of the assets he has, after the husband died;
4. The woman or the unregistered wife can not claim her husband's share of the property when he divorces. It is happening because marriage was not considered in Indonesian law. KHI has set about treasures in the house of stairs composed of property and treasure default. When a divorce occurs, the wife has the right to receive joint property legally. The situation will be more complicated for the woman if she is pregnant or already has a child at her marriage. Then he will bear the cost of living his child alone because he can not sue his man to pay for his child's education. As a mother, a woman who is married in an unregistered must show her great affection for the child from the unregistered marriage that she does because the child will also be mentally affected when he finds out that he is the child of an illegitimate marriage;

5. The presence of anxiety or fear when travelling far away or out of the environment because they do not have a marriage certificate. Without the marriage certificate, they will have difficulty proving that they had legitimate religion as husband and wife;
6. Nowadays, people are very fond of looking for loopholes in someone's ugliness and making them a sensitive topic to slander. Women who are married and the marriage is unregistered must have a strong mentality to face and listen to the people in their environment who gossip about them. If you do not have a strong mentality, then the woman will experience mental health problems.

CLOSING

Conclusion

There are various factors behind an unregistered marriage that supports many people who carry out these marriages. So it is not surprising that unregistered marriages have a high enough existence in Indonesia. If viewed from a perspective science religion of Islam, unregistered marriage does not lead to sin, but the impact sequel may pose a sin for the man. If viewed from a legal perspective in Indonesia, unregistered marriages are considered invalid, so they do not have legal protection. This is what causes many negative implications that women must bear. Even though there are implications in the form of a positive impact from the marriage, the negative repercussions taken are more significant than the positive ones. So it can be concluded that unregistered marriage is very detrimental to women.

Recommendation

Various and massive socializations are needed from the government regarding the advantages and disadvantages of unregistered marriage, especially for those who are still immature. Socialization and education must also be carried out widely in villages and cities to reduce the unregistered marriage rate, and give one important knowledge about the protection of women and children who desire to be borne by the unregistered marriage couple. The socialization and education also important to reduce the high amount of local community stigma, or gossip for those whose marriage is unregistered.

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