

## LAW OF MARRIAGE NOT REGISTERED IN KUA AND THE LEGAL CONSEQUENCES

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### ABSTRAK

Adanya fenomena pernikahan yang terjadi di masyarakat, yang tidak dicatatkan di KUA. Hal ini disebabkan karena adanya budaya lebih percaya dinikahkan Habib sebagai keturunan Nabi dan Kyai, daripada oleh Penghulu sebagai petugas dari KUA (pemerintah). Usia calon pengantin yang masih relative muda, calon suami yang bekerja sebagai PNS, sebagai pejabat atau sebagai pengusaha sukses tapi sudah beristri, dan factor lain yang mendorong seseorang memutuskan untuk menikah tapi tidak dicatatkan di KUA. Penelitian ini bertujuan untuk mengkaji: *pertama*, bagaimana Hukum dari pernikahan yang tidak dicatatkan di KUA menurut Syari'ah Islam, MUI dan Hukum Positif di Indonesia. *Kedua*, Akibat Hukum apa saja yang muncul dari pernikahan yang tidak dicatatkan di KUA. Penelitian ini menggunakan metode Kualitatif normatif dengan menganalisis isi / dokumen hukum dan library research yang bersifat analisis konten. Hasilnya, Pernikahan yang telah memenuhi syarat dan rukun menurut agamanya, sekalipun dinyatakan SAH secara Agama akan tetapi tidak dianggap sah secara Hukum Positif di Indonesia dan termasuk Tindakan Kriminal. sehingga tidak memiliki kekuatan hukum dan tidak ada perlindungan hukum terhadap anggota keluarga

**Kata Kunci:** Nikah tidak dicatat di KUA, Hukum, akibat Hukum

### ABSTRACT

There is a phenomenon of marriage that occurs in the community, which is not registered in the KUA. This is because there is a culture that believes that Habib is married off as a descendant of the Prophet and Kyai, rather than by the Penghulu as an officer of the KUA (government). The age of the prospective bride and groom who is still relatively young, the prospective husband who works as a civil servant, as an official or as a successful businessman but is already married, and other factors that encourage someone to decide to get married but are not registered in the KUA. This study aims to examine: first, how the law of marriage that is not registered in the KUA according to Islamic Sharia, MUI and Positive Law in Indonesia. Second, what legal consequences arise from marriages that are not registered in the KUA. This study uses a normative qualitative method by analyzing the content / legal documents and library research that is content analysis. As a result, marriages that have fulfilled the requirements and are in harmony according to their religion, even though they are declared Religiously Legal, are not considered legally valid in Indonesia and are considered criminal acts. so it has no legal force and no legal protection for family members.

**Keywords:** Marriage is not registered in the KUA, Law, legal consequences.

## **INTRODUCTION**

Islamic law has five main goals in human life, namely *hifdz al-din* (maintaining religion), *hifdz al-nafsi* (guarding the soul), *hifdz al-'aql* (maintaining reason), *hifdz al-nasl* (keeping offspring), and *hifdz al-mal* (guarding property). If these five points are maintained, it will benefit both in this world and in the hereafter. Marriage has the aim of fulfilling the rights of husband, wife, offspring, inheritance and rights related to marriage (Munawar, 2020, p. 56)

The Republic of Indonesia, as a country based on Pancasila, the first principle is Belief in One Supreme God, then marriage is considered to be closely related to religion or spirituality, so marriage does not only contain physical/physical elements, but also mental/spiritual elements. Even though the obligation to register marriages is not a pillar of marriage, it becomes very important as evidence if a problem occurs in the future (Tama, 1984, p. 10)

In the event of a marriage, legal norms and regulations are needed to regulate it. The application of legal norms in the event of marriage is especially needed in order to regulate the rights, obligations, and responsibilities of each family member, in order to form a happy, eternal and prosperous household (Isami, p. 70)

Based on the above background, this research was conducted to find out: First, how is

the law of marriages that are not registered in the KUA. Second, any legal consequences that arise from marriages that are not registered with the KUA. The method used in this study is a normative qualitative method.

## **DISCUSSION**

### **Marriage According to Islamic Shari'ah and Positive Law in Indonesia**

Marriage according to the language means to collect. According to Syara 'it means a contract that is well known and fulfills certain pillars and conditions for gathering (Drs. Moh. Rifa'i dkk, 1978, p. 374). Ta'rif Marriage is a contract that justifies association and limits rights and obligations as well as help between a man and a woman who is not a mahram (Rasyid, 2005, p. 374)

In terms of terminology, according to the Hanafi Madhhab, marriage is a contract that shows the permissibility of men having women to have sexual relations on purpose or showing the ability of men to have sexual relations with women who are not prohibited from marrying according to the Shari'a. According to the Maliki Madhhab, marriage is a contract to allow sexual relations with women who are not their mahram, magi women, slaves of the people of the book, with a shigat marriage. According to the Syafi'i Madzhab, marriage is a contract that contains the meaning of the permitting of sexual relations, which includes the word marriage or marriage or a word

that has a meaning with it. According to the Hanbali Madzhab, marriage is a marriage contract or contract which is expressed in the word marriage or marriage, or what has the meaning thereof (Munawar, 2020, p. 58)

According to Islamic Shari'a, the validity of marriage is the fulfillment of the conditions and pillars that have been regulated in Islam. Conditions are something that must exist in (before) marriage but do not include the nature of marriage. If any of these conditions are not met, the marriage is invalid. Terms, determine whether the work (worship) is legal but not included in the series of work (Arif, Ahmad Sahri & Suyud, 2013, p. 99). The pillars of marriage are the essence of marriage. Without one of the pillars, marriage is impossible. Pillars are something that must exist that determines the legality of work (worship), and is included in the series, for example the bride and groom in marriage (Arif, Ahmad Sahri & Suyud, 2013, p. 102)

The pillars of marriage according to the Hanafi Madhhab are only one, namely consent and qabul. According to the Maliki Madhhab there are three, namely the guardian, the bride and groom (husband / wife), and shigah (ijab qabul). According to the Shafi'i school there are five, namely shigah, husband (bridegroom), wife (bride), two witnesses, and guardian. According to the Hanbali Madzhab there are three, namely the bride and groom (husband and wife), ijab, and qabul (Munawar, 2020, p. 58)

Some of the conditions before the marriage takes place are:

- a. One religion, stated in the QS Al-Baqarah: 221
- b. The bride and groom have reached puberty (mature and intelligent).
- c. Consent of the bride and groom.
- d. Marriage guardians who meet the requirements are; men are Muslim, mature, have common sense and act fairly.
- e. Two witnesses who are Muslim, mature and fair.
- f. Paying a dowry/dowry for a prospective husband to a prospective wife based on Q.S. An Nisa aya 25
- g. The existence of consent and qabul (will and acceptance) (Ratnawati, 2015, pp. 17-19)

According to Law No. 1 of 1974, 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 or household based on God Almighty. Article 2 states:

- 1). Marriage is legal if it is carried out according to the laws of each religion and belief.
- 2). Each marriage is recorded according to the applicable laws and regulations.

The provisions of Article 2 paragraph (2) are further regulated in Government Regulation Number 9 of 1975 as the implementer of Law No. 1 of 1974. Articles relating to marriage procedures and their recording include articles 10, 11, 12

and 13. Article 10 Government Regulation No. 9/1975 contains:

- (1). Marriage procedures are carried out according to the laws of each religion and belief.
- (2). By observing the marriage procedure according to the law of his religion and belief, the marriage is carried out in front of the registrar and attended by two witnesses.

According to the Compilation of Islamic Law (KHI) article 2, it is explained that marriage according to Islamic law is a very strong contract / *mitsaqan ghaliizhan* to obey Allah's commands and doing it is worship. In Article 4 of the KHI it is stated that marriage is legal, if it is carried out according to Islamic law in accordance with Article 2 paragraph (1) of the Marriage Law. Article 5 of the KHI states "In order to ensure the orderliness of marriage for the Islamic community, every marriage must be recorded."

From the description above, it can be observed that in Islamic law it does not require that a marriage be recorded, while in positive law in Indonesia, marriage must be carried out and recorded by the Marriage Registrar at the KUA. If observed, the existence of religious norms and legal norms in the same legislation has the potential to weaken each other and even contradict each other. In this case, the potential for mutual negation occurs between Article 2 paragraph (1) and Article 2 paragraph (2) of Law no. 1 year 1974.

### **Legal position of marriage that is not registered in KUA**

Islam determines the validity of the marriage contract on three kinds of conditions, namely:

1. Fulfillment of all the pillars of marriage.
2. Fulfillment of the conditions of marriage.
3. Does not violate the prohibition of marriage as determined by the Shari'a

There are several opinions of Islamic scholars about marriage that are not recorded. According to the Hanafi and Hambali madhzabs, a marriage whose conditions and pillars are met is legal according to Islam. According to Maliki fiqh, if there is an agreement between the husband and the witnesses to hide from his previous wife, family or society, then the marriage is void. If the concealment is due to fear of a wrongdoer or the like, then it is obligatory to cancel it, unless intercourse has occurred. According to Yusuf Qardawi, unregistered marriages are valid as long as there is consent and witnesses. According to Quraish Shihab, marriages that are not recorded as long as there are two witnesses are still considered valid. Even so, registration of marriages according to the law is very important because marriages that are not recorded can result in sin for the perpetrators, because they violate the provisions set by the government (Paraga, 2019, p. 146)

The Indonesian Ulema Council (MUI) has issued a fatwa on underhand marriage. Underhand

marriage is a marriage that fulfills the pillars and conditions stipulated by fiqh (Islamic law). However, the marriage is without official registration in the competent authority as stipulated in the legislation ((MUI), 2008, p. 531). According to K.H. Ma'ruf Amin The use of the term underhand marriage aims to distinguish it from sirri marriage -which is known to the public-. According to the MUI, the term underhand marriage is a term that is more in line with Islamic religious provisions (Rohman, 2021, pp. 78-79)

The MUI fatwa commission has formulated the law of underhand marriage as a legal marriage, because the conditions and pillars have been fulfilled, but it can be illegal if there are harms caused by the marriage. Therefore, marriages must be officially registered with the competent authorities as a preventive measure to reject negative impacts/mudharats (saddan lidz-dzar'ah). ((MUI), 2008, p. 531)

MUI refers to QS. Al-Nisa' (4): 59, regarding the obligation to obey the government (ulil amri), also several hadiths recommending obedience to the leader, to carry out walimah, announce marriage, there should be no danger or mutual harm and qa'idah fiqh prevent benefit takes precedence over attracting benefit.

Article 2 paragraph (1) of the Marriage Law states that "Marriage is legal if it is carried out according to the law of each religion and belief." (UUP, 1974). Understanding of this

article gives birth to the perception that marriage is legal as long as the law according to one's religion has been declared valid. In Islamic law, marriage is valid if the conditions and pillars are met. The terms and pillars of marriage in Islamic law do not include marriage registration as a legal requirement for marriage. Meanwhile, Article 2 paragraph (2) of the Marriage Law states that "Every marriage is recorded according to the applicable laws and regulations." (UUP, 1974).

From the 2 (two) paragraphs in Article 2 of the Marriage Law, there is a legal debate regarding the validity of marriages which are carried out according to Islamic teachings, but are not recorded in state documents. Legal according to religion, but does not get legality according to state law. So that the rights and obligations between husband and wife do not get full guarantees from the State.

Differences of opinion regarding the validity of marriages are related to recording, on the one hand, stating that marriages are not valid if they are not registered. Article 2 paragraph (1) and paragraph (2) of Law Number 1 of 1974 constitute an inseparable unit as a condition for the validity of a marriage. Another opinion states that marriage is legal if it is carried out in accordance with the teachings of their respective religions or according to their beliefs, even though the marriage is not registered. Marriage registration is only for administrative purposes for the

convenience of the state in carrying out supervision and protection for every citizen. So whether or not a marriage is valid is not determined by recording, but is required by the law of each religion. (Isami, p. 75)

**Legal consequences of marriages that are not registered at the KUA**

By not registering a marriage, it will have legal consequences for the marital status and the status of the child being born. Among others are:

- a. In the eyes of the state, marriage is considered invalid
- b. The child who is born only has a civil relationship with the mother or the mother's family (Articles 42 and 43 of the Marriage Law). There is no civil relationship with his father.
- c. The wife and children born of the marriage are not entitled to demand a living or inheritance from their father (Mukhtar, 1994, p. 11)

Ali Uraidy revealed the legal consequences of unregistered marriages include: There is no permanent legal force, if a wife's rights are violated by her husband, the wife cannot legally claim these rights; The marriage contract cannot be legally proven as a legal spouse; Interests related to making Identity Cards (KTP), Family Cards (KK), Passports, birth certificates of children or those related to politics such as voting or being elected in general elections cannot be served; Husbands can freely leave their obligations, they can even resort to violence; The husband can remarry

without the wife's consent in court; Affects wife and children psychologically, feels uncomfortable and uneasy, especially when entering school, related to population administration, this can affect children's concentration, self-confidence and intelligence. When the husband dies, it is difficult for the wife and children to get inheritance (Drs. Ali Uraidy, November 2012, p. 990)

Considering that marriage registration is very urgent in protecting and guaranteeing legal certainty, it is hoped that the state regulates and enacts marriage conditions as an effort to positivize religious norms in marriage law. The requirements for marriage are formulated by the state in the fulfillment of marriage registration as well as the issuance of marriage certificates contained in the law or legislation related to marriage and population administration. (Pristiwiyanto, 2019, p. 37)

**CONCLUSION**

A legal marriage according to Islam is a marriage carried out through a marriage contract and the pillars and conditions are fulfilled. According to the Indonesian Ulema Council (MUI), underhanded marriages (which are not registered with the agency determined by the government) are legal, because the conditions and pillars have been fulfilled, but HARAM if it causes madharrat. MUI recommends that marriages must be officially



registered with the competent authorities, as a preventive measure to reject the negative impacts/madharrat (saddan lidz-dzari'at).

According to Positive Law in Indonesia (Marriage Law no. 1 of 1974, PP no. 9 of 1975 as the implementation of UU No. 1 of 1974, and in the Compilation of Islamic Law), marriage is legal if it is carried out according to religious provisions, but if it is not registered at the KUA, the status is not legal in the eyes of the State, because it is not legal in the State, there is no legal protection in it for family members, especially wives and children, and it will be difficult to get any facilities and services from the government. It is hoped that the government will strictly regulate the rules regarding this and there will be clear sanctions if the marriage is not registered with the KUA.

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