

Technium.

39/2023

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The meaning of "un-recorded marriage" in the perspective of the marriage law

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Abstract. Humans are zoon politicon, namely creatures that live in groups. As humans who live in groups, humans always need other people in living their lives. One of the needs of human life is to form a family and obtain offspring. This is a human right for everyone. Provisions on the right to have a family and continue offspring are regulated in Article 10 paragraph (1) of Law Number 39 of 1999 concerning Human Rights which stipulates that everyone has right to form a family and continue offspring through a legal marriage. Based on provisions in the article it can be understood that to form a family one must first marry. Marriage as an institution that is used to bind humans who are destined in two genders, namely men and women. After the marriage takes place, a family is formed. Marriage is realm of private law which cannot be separated from intervention of state, which in this case is government, on the basis reason that marriage is not just forming a family and continuing offspring, but there are far-reaching consequences for parties bound by marriage and their children born from marriage. Marriage in Indonesia is regulated in Law Number 1 (1974) concerning Marriage which has been amended by Law Number 16 of 2019 (hereinafter referred to as the Marriage Law). Unrecorded marital status does not have binding legal force because it doesn't have an authentic certificate as proof of validity marriage. As stipulated in Law No.1 of 1974, Government Regulation No.9 of 1975, Permenag No.20 (2019) concerning Marriage Registration and Presidential Decree No.1 of 1991 concerning Compilation of Islamic Law. Status of 'Unrecorded Marriage' on the Family Card to Protect Children and Wife. It is necessary to renew the legal registration of marriages through a contextual approach, so as to provide certainty and legal protection for husbands and wives and children born from a marriage. Socialization is needed so that people realize how important it is to register their marriage even though they have to go through a trial at the Religious Court.

Keywords. marriage, law, family

Introduction

Humans are zoon politicon, namely creatures that live in groups.[1] As humans who live in groups, humans always need other people in living their lives Opinion from Moch. Isnaeni that living side by side and interacting with fellow human beings makes it easier to fulfill their needs.[2] One of the needs of human life is to form a family and obtain offspring. This is a human right for everyone. Provisions on the right to have a family and continue offspring are regulated in Article 10 paragraph (1) of Law Number 39 of 1999 concerning Human Rights which stipulates that everyone has right to form a family and continue offspring through a legal marriage. Based on provisions in the article it can be understood that to form a

family one must first marry. Marriage as an institution that is used to bind humans who are destined in two genders, namely men and women.[3] After the marriage takes place, a family is formed. Marriage is realm of private law which cannot be separated from intervention of state [4], which in this case is government, on the basis reason that marriage is not just forming a family and continuing offspring, but there are far-reaching consequences for parties bound by marriage and their children born from marriage. Marriage in Indonesia is regulated in Law Number 1 (1974) concerning Marriage which has been amended by Law Number 16 of 2019 (hereinafter referred to as the Marriage Law).[5]

This Marriage Law was born in the context of legal unification. Prior to the enactment of this law, Indonesia experienced an era of pluralism in marriage law which was marked by the diversity of applicable marriage laws. For native Indonesians who are Muslim Islamic law applies, for other native Indonesians their respective regional customary laws apply, for native Indonesians who are Christians apply (Huwelijks Ordonantie Christien Indonesier), abbreviated as HOCI (S.1933 No.74), for Easterners Chinese foreigners and Indonesian citizens of Chinese descent apply provisions of Civil Code with minor changes, for other Eastern Foreigners and other Indonesian citizens of Foreign Eastern descent their customary law applies.

The Indonesian government passed of Marriage Law which consists in 14 chapters and 67 articles as part of legal unification. The enactment of this law has consequence that the previous rules regarding marriage law are no longer valid. This is confirmed in Article 66 of the Marriage Law that "for marriage and everything related to marriage based on this law, then with enactment of this law be provisions stipulated in Civil Code (Burgelijk Wetboek), Indonesian Christian Marriage Ordinance (Huwelijks Ordonantie Christien Indonesier S. 1933 No.74), Mixed Marriage Regulations (Regeling op de Gemingde Huwelijken S.1898 No.158) and other regulations governing marriage as long as they are regulated in this law, is declared invalid."[6]

The formation Marriage Law is one of concretizations partial codification efforts taken by the government. Marriage registration is one of principles national marriage law which is based on Law Number 1 of 1974 concerning Marriage. In the marriage laws and regulations in Indonesia, the existence of the principle of registration of marriages is related to and determines the validity of a marriage, meaning that in addition to following the provisions of each respective religious law or religious belief, it is also a condition for the validity of a marriage.[7] Therefore, the recording and making of a marriage certificate is an obligation in the marriage laws and regulations in Indonesia. However, in practice, the obligation to record and draw up a marriage certificate creates an ambiguous legal meaning, because the obligation to record and make a marriage certificate for each marriage is considered only as an administrative obligation, not a determinant of the validity of a marriage, so that the registration of a marriage is an unrelated matter and determines the validity of a marriage certificate marriage. Even though the marriage is carried out according to the laws of each religion or religious belief, but is not recorded, the marriage is considered to have no legal force.[8] This unrecorded marriage means that the husband and wife and their children do not receive legal protection.

The Director General of Population and Civil Registry Ministry Home Affairs, Zudan Arif Fakrulloh stated that all residents must be recorded on the family card. For those who are married sirri can be entered in one Family Card (KK), "in the family card it will be written that the marriage has not been registered or marriage has not been registered, meaning sirri marriage,". The conditions are by making a statement of absolute responsibility (SPTJM) for truth husband and wife, and it must be known by two witnesses.

Taking into account the statement by the Director General of Population and Civil Registration Ministry of Home Affairs, it will be written on the Family Card that a person's marital status will be divided into Recorded Marriages and Unregistered Marriages. This is intended to distinguish whether or not residents have a marriage certificate issued by Office of Religious Affairs (KUA) or a marriage certificate issued by Dukcapil Office. If you already have a marriage certificate or marriage certificate, then the marital status will be Registered Marriage. If you don't have a marriage certificate or marriage certificate, then marital status is Unregistered Marriage.

Family Card is a family identity card that contains data about name, composition and relationship within the family, as well as identity within family. In population administration, the Family Card is very important, because it contains information related to the population contained in the family card.

In the currently circulating Family Card, several elements of population data are displayed such as a person's Full Name, National Identity Number, Gender, Place of Birth, Date of Birth, Religion, Education, Type of Work, Marital Status, Status of Family Relationships, Nationality, and Parents Name.

Along with dynamics development of population administration, format Family Card will undergo changes. One of them be Marital Status Column. In previous Family Card format, the marital status column consisted of:

1. Not yet married
2. Marry
3. Divorced life
4. Divorced dead

But in the new format it becomes:

1. Not yet married
2. Marriage (Registered and Unregistered)
3. Divorced life
4. Divorced dead

This statement raises pros and cons in society. The question arises of marital status has not recorded this distortion or solution.

Research Problem

What are meaning of "unregistered marriage" in the perspective Marriage Law?

Research methods

This research is a type of normative legal research. The approach taken in this study is the statutory and conceptual approach.[9]

Discussion

Arrangements for registration of marriages in the Marriage Law

The Marriage Law contains legal principles that are used as the foundation for its implementation.[10] Legal principles or principles are an important and basic element of legal regulations. Satjipto Rahardjo argues that legal principles heart of legal regulations because they are the broadest foundation for birth of legal regulations.[11] The function of the legal principle bases its existence on formulations by legislators and judges and has a normative and binding influence on the parties. The legal principle is basis for establishing a legal provision. According to Moch.Isnaeni the principles contained in the Marriage Law are:

1. The purpose of marriage is to form a happy and eternal family, so that it contains the principle of complicating divorce;
2. Marriage is considered valid if it is held based on religious laws and beliefs, then it is recorded according to the rules;
3. The principle of monogamy is basically used as a foundation;
4. The prospective bride and groom should be mentally and physically mature when getting married;
5. The balance of the legal position of husband and wife.[12]

The principle is a concretization of values. The context of Indonesian law, the value standard comes from *rechtsidee*, namely Pancasila. This is manifested in substance of law, as is substance in the Marriage Law which cannot be separated from the values of Pancasila as basic philosophy of Indonesian people. Philosophically and objectively the Indonesian people in living in society and as a state are based on the values contained Pancasila precepts. The consequence of Pancasila as the philosophy of the Indonesian nation is that every applicable law and regulation must be based on Pancasila values. Article 1 of the Marriage Law stipulates that 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 based on Belief in One Almighty God. The acknowledgment of God's existence is manifested in ontological contemplation that in essence humans are God's creatures, as male or female. So marriage is understood to mean that marriage is carried out between a man and a woman.[13] Marriage has two aspects, namely:

1. The formal aspect stated in the sentence of inner and outer bond which means that apart from having a physical bond, it also has an inner bond that is felt by the parties who are bound in the marriage and is core of the marriage;
2. The socio-religious aspect which is stated in the sentence forms a family and is based on the One God, meaning that marriage is closely related to spirituality so that it is not only a physical element but also an inner element.

There are two important bonds in marriage, namely physical and spiritual bonds. Birth bonds, for example, are good relations with family and harmony in married life. Meanwhile, inner bond is an attitude that is willing to accept a partner, both the shortcomings and strengths in him. The purpose of the inner and outer bond is in the form of a relationship between behavior of the two parties in forming a happy and eternal household. In terms of ties, they help each other and earnestly in building a household, reflecting a harmonious family and interacting with each other in maintaining good relations in the community. In terms of inner bond there is a feeling of mutual affection and a feeling of love that is so strong, grows, and binds each other in hearts of both parties in building a strong household and living happily.[14]

The provisions in Article 1 of the Marriage Law indicate that purpose of marriage is to form a family which is part of smallest structure of society because in that family consists of father, mother and children. This shows existence of axiological aspects in marriage. This aspect of axiology seeks to know the essence values contained in family law. This article does not only talk about purpose of marriage, which is to form a happy and eternal family, but also must be based on Belief in One and Only God. Article 1 of the Marriage Law shows that there is a religious value in achieving the goal of marriage, so that marriage is not only a civil bond but still adheres to Pancasila as the source of all positive law in Indonesia.

The achievement of this marriage goal shows an epistemological aspect. The epistemological aspect is a philosophical effort to understand nature of truth and knowledge that can be achieved by human ratios regarding family and marriage laws so that they can be properly maintained as a means for humans to carry out life in the world. The occurrence of

marriage must be registered as regulated in Article 2 of Marriage Law. Article 2 paragraph (1) stipulates that marriage is legal if it is carried out according for laws of each religion and belief. Article 2 paragraph (1) be implementation in Article 28e paragraph (1) of 1945 Constitution which stipulates that every person is free to embrace religion and worship according to his religion. Here, religion is recognized as a value that is not only understood, but also must be internalized and practiced in daily life, one of which is marriage. Thus religion determines the validity of marriage. It can be explained that absolutely marriage is considered valid if it is carried out according to religious law and the beliefs of each party who enters into the marriage. Pancasila is the basis for the enforcement of regulations in Indonesia because philosophically Pancasila is both the nation's view of life as well as the soul of the nation, providing identity and integrity as well as national dignity and modern world civilization as well as a source of motivation and spirit of struggle for the Indonesian nation.[15]

Article 2 paragraph (1) of the Marriage Law gives force to the enactment of religious marriage law adhered to by Indonesian citizens, so that no marriage is considered valid outside of religious law.

Article 2 paragraph (2) of the Marriage Law regulates that each marriage is recorded according to applicable laws and regulations. The benefit of registering a marriage is as proof so that it has permanent legal force. Registration of marriages is not only part of administrative interests, but as one of valid evidences of occurrence of legal events and plays an important role in protecting the rights of someone who is bound in marriage. The purpose of registering marriages is to provide certainty and protection for parties carrying out the marriage, so that there is authentic evidence be occurrence of marriage and the parties can defend their marriage to anyone before law. Thus a marriage that is not registered can be considered by the state as having never happened and not obtaining legal certainty.[16]

Marriage registration according to Indonesian law is divided into two, namely for Muslim couples by registration is carried out at the Office of Religious Affairs and for couples whose religion is other than Islam, the registration is carried out at the Civil Registry Office. The existence of provisions in Article 2 of the Marriage Law shows that marriages are not only registered because of the occurrence of a new legal event which gives rise to legal consequences, but also has religious values in it, namely that a marriage is considered valid if the marriage is carried out according to the laws of each religion and belief. The provisions of Article 2 can be said between paragraph (1) and paragraph (2) there is a relationship, meaning that it can be considered that the registration of marriages 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 law of each religion and belief it.[17]

The meaning of marriage has not been recorded

Unregistered marriage is a new term in the realm of population administration law in Indonesia. So far, only two terms are known, namely married and not married. After conducting a thorough study of marriage problems in Indonesia from Sabang to Merauke, facts were found in the field that there are two classifications of marriage, namely marriages in which the married couple already has a marriage book and married couples who are not yet married. Sociologically, both live procreate and are accepted in their social structure. Indeed, there are some people who state that a married couple who does not have a marriage book is considered not to be recognized by the state of marriage.

Based on the results of a study by the Dukcapil Directorate General, there are 5 (five) reasons for undocumented marriages, namely:

First, multiple interpretations of the legal provisions of marriage

The validity of a marriage in Law Number 1 of 1974 concerning Marriage is regulated in Article 2, namely: paragraph (1) Marriage is legal, if it is carried out according to the law of each religion and belief and in paragraph (2) Every marriage is recorded according to the applicable laws and regulations. In Article 2 of Law Number 1 of 1974 it stipulates two legal lines that must be obeyed in entering into a marriage. Paragraph (1) stipulates firmly and clearly regarding the validity of a marriage, namely that the only requirement for a marriage to be valid is if the marriage is carried out according to the laws of each religion and belief of those who will enter into the marriage.[18]

Second, Marriage Registration

In Indonesia, although there are laws and regulations that regulate that marriages are registered, for example, for Muslims it is registered at the Office of Religious Affairs by a Marriage Registrar and for non-Muslims it must be registered at Dukcapil Service. However, in reality it seems that public awareness be importance of registering marriages has not been fully implemented. Among the people there is still an opinion that carrying out a marriage is sufficient only by fulfilling the provisions in Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage, it is sufficient and has guaranteed of validity marriage. Marriage registration is seen as nothing more than an administrative action that has no effect on the validity of a marriage.[19]

According to Constitutional Court Decision Number 46/PUU-VIII/2010, the legal status of marriage registration is not a factor that determines the validity of a marriage, therefore registration of marriage is only an administrative obligation that is required under statutory regulations. The factors that determine validity of a marriage are the conditions determined by religion of each pair of prospective bride and groom. The obligation to register marriages by the state through laws and regulations is an administrative obligation. In this decision, constitutional justices also emphasized that there are two important meaning of administrative obligation in form of registration be marriage. First, from perspective by the state, the aforementioned registration is required within framework of the state's function of providing guarantees for the protection, promotion, enforcement and fulfillment of the human rights concerned which are responsibility the state and must be carried out in accordance with the principles of a democratic rule of law regulated and set forth in statutory regulations invitation. If registration is considered as a restriction, such registration does not conflict with constitutional provisions because restriction is determined by law and is carried out with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others, and to fulfill just demands in accordance with moral considerations, religious values, security, and public order in a democratic society.

Second, administrative recording carried out by the state is intended so that marriage, as an important legal act in life carried out by the person concerned, which has implications for very broad legal consequences, can later be proven with perfect evidence with an authentic deed, so that protection and services by the state related to rights arising from a marriage concerned can be implemented effectively and efficiently. This means that by having authentic proof of marriage, the rights that arise as a result of marriage can be protected and well served because there is no need for a verification process that takes more time, money, effort and thought, such as proving the origin of children who are not can be proven by an authentic deed, then regarding this matter it will be determined by an authorized court decision. Such proof is definitely not more effective and efficient when compared to having an authentic deed as proof.

Third, the Occurrence of Marriage According to Customs

In general, in Indonesia, marriage in the view of adat means that marriage is not only a civil engagement, but also a customary engagement which is also a kinship and neighborly agreement. In other words, according to this customary law, a marriage bond does not only bring legal consequences to civil relations, for example the rights and obligations of husband and wife, position of children, joint property, rights and obligations of parents, but more than that regarding the customary inheritance relationship, kinship, kinship and neighborliness as well as regarding traditional and religious ceremonies.

Fourth, Siri Marriage

Siri marriage is defined as a secret marriage or underhand marriage. It is said to be an underhand marriage because during the implementation of the marriage it is not registered in the registration of marriages. In this sirri marriage, there is a condition that is deliberately created not to show the wider community that the two prospective husbands and prospective wives have officially become husband and wife.

Fifth, Interfaith Marriage

In Indonesia, in essence, marriage must be carried out within the same religion, if you still adhere to a different religion, the marriage cannot be registered by the state. In addition, there are also ancestral religions or adherents who do not yet have an organization registered with the Ministry of Education and Culture and religions other than those currently recognized as official religions in Indonesia.

The Ecosystem and Marriage Law also includes the Population Administration Law (Adminduk Law). The Marriage Law is upstream and the Adminduk Law is downstream. So if the marital affairs are in order and complete, the Adminduk process must be correct and easy. The problem that occurs is that upstream there are still many problematic marriages, making it difficult for government action to carry out population administration of the marriage events that occur.[20]

Some wrote the status of 'married' on the KK, some wrote on the KK 'not yet married'. In this case, when Dukcapil receives reports from residents, they must act concretely, because in the KK there are mandatory fields that must be filled in. The problem is, when it is written in the COW that the status of 'married' or 'not yet married' has legal implications for husband, wife and children.

If status is written in the KK as "Not Married" then there will be implications for the wife, husband and children, namely a) the husband and wife are considered unmarried even though the marriage event has already occurred so that if Dukcapil records them as unmarried it can be deemed that fraud occurred/published documents that were not in accordance with reality, b) The Head of the Dukcapil Service is very afraid of getting into legal trouble and the Kadis who signs the family card has the potential to be subject to criminal sanctions for providing incorrect information, c) Children are considered not the children of their father, d) Women can remarry (Polyandry)

If the status of "Married" is written in the KK, there will be implications for the wife, husband and children, namely a) the husband and wife are married but there is no marriage book/marriage certificate, b) the registration of child's birth is unable to meet the requirements for a photocopy of the marriage book/ marriage certificate so that there is confusion, if the birth certificate is written as "child of a mother" even though the marriage event has already taken place (the father is already known). If the birth certificate is written as "children of father and

mother" but cannot fulfill the requirements for a marriage book/marriage certificate c) with marital status written as Married, then the marriage status can no longer be registered d) the couple is also reluctant to register for marriage certificates because the KK has already written "Married".

With the above conditions that have the potential to cause various problems in social life, Dukcapil then makes an affirmative policy to protect his wife and children by including the status that best fits the reality, namely the status of Unregistered Marriage. With this status, there are implications for the wife, husband and children, namely: a) the husband and wife are considered married but there is no marriage book/marriage certificate. For this reason, other supporting evidence is needed, for example a statement letter from the person concerned. SPTJM is a supporting document as a guide for the Dukcapil Office, b) Registration of the birth of their child, that is, the names of the father and mother can be included in the birth certificate with the addition of a phrase whose marriage has not been registered in accordance with the provisions of the legislation, c) data is obtained to be followed up at Marriage Isbat /legalization of marriage through the determination of the religious/state court and registration of mass marriages, d) the status of a child in the KK can be written as a child and e) the status of a wife in the KK can be written as a wife.

The application of marital status on the family card for married couples who have not been registered by the state with "Unregistered Marriage" provides concrete benefits felt by the community, including: First, it provides certainty regarding marital status and family relationships on the family card. Second, it makes it easier for residents to access various public services without discrimination (legal protection and legal certainty). Third, provide guarantees so that residents get rights in accordance with their marital status (as wife/husband/child). Fourth, prevent the occurrence of polyandry and limit the occurrence of unlimited marriages. Fifth, provide certainty regarding the origin of the child (who is the father and mother). Sixth, provide certainty if the marriage that has not been registered is divorced, either through a court decision (after the marriage confirmation is carried out in the context of settling the divorce according to the provisions of the Compilation of Islamic Law) or through a statement of absolute responsibility for an unrecorded divorce. Seventh, they can start disclosing information about unregistered marriages and customary marriages which are then encouraged and continued with marriage consecrations.

Not all marital status is recorded on the family card (KK) actually not all due to the sirri marriage factor, from several cases that the authors found there were several other factors, such as when taking care of the family card they did not bring the marriage book, the marriage book was lost, or there was a discrepancy in personal data (name, place/date of birth and year) between KTP/KK, birth certificate and marriage book, some even when they got married tens of years ago the name was based on a nickname in the village (so the marriage document was written that way) but now it has to be written with the real name, and several other causes. It should be underlined that unrecorded marital status does not have binding legal force because it does not have an authentic certificate as proof of the validity of the marriage. As stipulated in Law No.1 of 1974, PP No.9 of 1975, Permenag No.20 of 2019 concerning Marriage Registration and Presidential Decree No.1 of 1991 concerning Compilation of Islamic Law. As a solution, the way that can be taken is :

First, for married couples who are still unmarried but are married in unregistered marriages, to immediately register their marriage at the official state institution, namely the District Office of Religious Affairs (KUA) in accordance with the jurisdiction of each husband and wife, by fulfilling all the administrative requirements ,and terms of pillars and terms of

marriage. Intended to safeguard the rights and obligations of husband and wife and as a form of legal protection from the state.

Second, for married couples who are already married and not registered on their residence status, they can submit a marriage certificate to the Religious Court (PA) in order to obtain a determination of their marriage as a way that can be taken by married couples to obtain recognition from the state for marriages that have been carried out by both of them along with the children born during the marriage, so that the marriage has legal force. If the decision of the Religious Court is valid, of course the children born from the marriage are also legitimate children. This is because marriage registrars at the Office of Religious Affairs (KUA) cannot issue marriage certificates for unregistered marriages. So, itsbat marriage is submitted in order to obtain recognition from the state for a marriage whose status is only valid according to religion so that the marriage has legal force. Then register it with the Office of Religious Affairs appointed by the Religious Court.

Conclusion

Unrecorded marital status does not have binding legal force because it doesn't have an authentic certificate as proof of validity marriage. As stipulated in Law No.1 of 1974, Government Regulation No.9 of 1975, Permenag No.20 (2019) concerning Marriage Registration and Presidential Decree No.1 of 1991 concerning Compilation of Islamic Law. Status of 'Unrecorded Marriage' on the Family Card to Protect Children and Wife.

It is necessary to renew the legal registration of marriages through a contextual approach, so as to provide certainty and legal protection for husbands and wives and children born from a marriage. Socialization is needed so that people realize how important it is to register their marriage even though they have to go through a trial at the Religious Court.

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