

Marriage Confirmation: Secret Marriage And Division Of Joint Assets

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Info Articles	Abstract
<p>Article History Received : 2017-07-03 Revised: 2017-07-12 Published: 2017-07-30</p> <p>Keywords: <i>Marriage Confirmation, Sirri, Joint Property</i></p>	<p>One of the consequences of divorce from a sirri marriage or underhand marriage is related to the wife's share of the joint property. This is because in a sirri marriage or underhand marriage there are no provisions regarding the division of joint property. Provisions regarding the division of joint property are only regulated in registered marriages as stipulated in the Compilation of Islamic Law, Article 7, number 3 letter (a), that marriage confirmation provides a way for the interests of husbands and wives who have had a sirri or underhand marriage to be registered under state law. From an empirical legal perspective, the 120 people who participated in the marriage confirmation hearing on April 21, 2017, which was first held in Hamparan Perak sub-district, Deli Serdang, are proof that the community believes that marriage confirmation is the best solution.</p>

I. INTRODUCTION

Every divorce certainly has an impact on the division of joint assets, commonly known in society as the division of joint assets (Abbas, 2004). Here, problems often arise where one party feels more entitled to the assets being contested. For example, X and Y are husband and wife whose marriage was not registered and have divorced. During their marriage with X, they owned a house. However, not long after, the household that was built together with X and Y fell apart and ended in divorce. Y was arbitrarily divorced by X and thrown out of the house. Tragically, because Y was married to X through a secret marriage in front of his parents, Y could not do much to demand his rights from X except just cry.

The problem is how to distribute joint assets in the event of a divorce from a secret marriage (talak). If a divorce occurs in a secret marriage, the wife cannot claim joint assets because the marriage was not registered with the Office of Religious Affairs (KUA). Because under state law, the marriage between the two never existed, when the husband dies, the assets are only counted as the husband's personal assets and will be distributed to his legal family according to the

legal line of descent. According to Article 6 of the Compilation of Islamic Law, a marriage that is not registered or cannot be proven by a marriage certificate has no legal consequences. This means that if a husband or wife fails to fulfill their obligations, neither party can sue the court for any support for the wife or children or for any joint property acquired during the marriage. Furthermore, if one party dies, they cannot inherit from their husband or wife.

It is different if the marriage is carried out in a legally registered manner. In a legal marriage, the wife is one of the heirs with the greatest right to receive a share of her husband's inheritance and can demand a division of the joint assets, which are her personal rights.

A secret marriage, or nikah sirri (unofficial marriage), is a marriage performed in accordance with the requirements of Islamic marriage but not registered with the Office of Religious Affairs (KUA) or by a Marriage Registrar (PPN). It is called sirri because it is conducted secretly, privately, or clandestinely without any publicity.

Although from the perspective of Islamic Law, this unregistered marriage does not result in the marriage being annulled or invalid, from a positive legal perspective, this marriage is

considered not to have gone through a valid procedure, because it did not register the marriage in accordance with the provisions of Marriage Law Number 1 of 1974 Article 2; "Every marriage is recorded according to the applicable laws and regulations". The same thing is also stated in Article 5 of the Compilation of Islamic Law which states: (1) In order to guarantee orderly marriage for the Islamic community, every marriage must be recorded (2) Registration of marriage as referred to in paragraph (1) is carried out by a Marriage Registrar Officer as regulated in Law No. 22 of 1946 in conjunction with Law No. 32 of 1954. So, what distinguishes unregistered marriage from other general marriages, in Islam, lies in two things; (1) It is not officially recorded by government officials, and (2) there is no publication. The concept of unregistered marriage like this is generally considered valid (Anwar, 2017).

Objective the purpose of registering a marriage is to ensure legal certainty. Legal certainty is a legal instrument capable of guaranteeing the rights and obligations of every citizen. This means providing assurance to members of society that all will be treated by the state/authorities according to the law, not arbitrarily.

Although we don't find any verses in the Quran that specifically address the command to register marriages, and the Prophet Muhammad (peace be upon him) never exemplified this practice, the current practice of registering marriages is actually a government effort to regulate the practice of marriage.

By registering the marriage which can be proven by a marriage certificate, if a dispute occurs between them or one party is irresponsible, the other party can take legal action to defend or obtain their respective rights, because with this deed the husband and wife have proof authentic for the legal actions they have carried out.

According to Purnadi purbacaraka and Soerjono Soekanto, the law aims to provide peace in life between individuals which includes external order between individuals and peace between individuals (Arto, 1996). To overcome the possibility of problems occurring in sirri marriages or underhand marriages, in cases of urgent need and public interest, the state through the Compilation of Islamic Law regulates the possibility of submitting a request for marriage confirmation to the Religious Court in order to resolve problems in marriage, one of which is marriage confirmation for divorce. So for marriages that have not been officially registered, they can submit a request for marriage confirmation to the local Religious Court. Then, after the request for marriage confirmation is decided and granted, a new request is submitted, namely for divorce purposes, either divorce or divorce suit.

So, basically, marriage confirmation is the determination of the marriage of a man and a woman as husband and wife which has been carried out in accordance with religious provisions. Islam means that the conditions and pillars of marriage have been fulfilled, but their marriage was not registered at the KUA office, whether it was a secret marriage or an unofficial marriage.

II. RESEARCH METHODS

Research method means a way or step that someone takes in research by using various scientific disciplines that are used to solve or find and develop and test the problems taken so as to form results and discussions that can be accounted for

In accordance with the objectives of this legal research, in legal research we know There is legal and empirical research. Legal research is conducted by examining library materials, which constitute secondary data and is also called library research. Empirical legal research is

conducted by conducting field research, which constitutes primary data (Soehartonne, 2008).

In conducting this research, the author used a juridical-empirical approach. The juridical approach was used to analyze various laws and regulations in the field of Islamic marriage and family law. Meanwhile, the empirical approach was used to analyze law as a patterned social behavior in a society that constantly interacts and relates to social aspects. It also analyzed how Islamic marriage and family law are applied in the lives of Muslim communities, in particular, and the implementation of marriage confirmation in the Hamparan Perak District, Deli Serdang Regency.

In accordance with the type of data collected, the data collection techniques used in this study are documentation and interviews. According to Soehartono, documentation is a data collection technique that is not directly aimed at the research subjects. Usually in the form of documents, reports, scientific writings and archives related to the focus of the research. 5 The documents to be studied are documents in the form of data on marriage confirmation applicants during the period 2016-2017. The contents of the documents consist of the results of marriage confirmation hearings in Hamparan Perak District, Deli Serdang Regency.

III. RESULTS AND DISCUSSION

Researchers found that in Hamparan Perak sub-district, Deli Serdang Regency, many people still practice unregistered marriages, or underhand marriages. This is evident in the overwhelming enthusiasm of Hamparan Perak residents to register their unregistered marriages with the Office of Religious Affairs (KUA).

To that end, on April 21, 2017, the Hamparan Perak sub-district Office of Religious Affairs (KUA), in collaboration with the Hamparan Perak sub-district head, held a marriage confirmation hearing. This was the first time this event had

been held in Hamparan Perak sub-district. The number of participants selected through file selection by the Hamparan Perak sub-district Office of Religious Affairs (KUA) was 120 out of approximately 200 applicants.

There are several reasons behind their marriage, First In a society that prohibits free sex and cohabitation (*samen leven*), such as in Indonesia, marriage is the institution with the most fundamental and legal function to fulfill these needs. This reasoning aligns with the fact that the family is a fundamental institution, serving as a vehicle for society to regulate and organize sexual satisfaction. This implies that by marrying in secret, an act previously considered sinful and resulting in feelings of guilt is transformed into a legitimate and permissible act or deed according to religion. This is natural and humane, as it is a universal human need. A secret marriage is not the only way to fulfill biological needs. Second, communities in certain regions consider a wedding ceremony led by a cleric, *kiai*, or similar, rather than by a government official, to be more *ultma* (*afdhal*) or more valuable and sacred. Third, their request is based on economic reasons, so that the marriage can be carried out as quickly as possible and sufficiently conducted according to Islamic law. Because of economic factors, an Islamic marriage is the best and most economical option, and is very helpful. Islamic marriages are only carried out in front of a cleric or *kiai* as the marriage registrar (Rofiq, 2000).

Fourth Furthermore, some individuals in unregistered marriages, or certain communities, believe that marriage is best conducted with individuals from the same community. This is based on the belief that individuals within the same community share a relatively similar understanding of religion and possess a relatively good sense of personal integrity, faith, piety, and morals, and are mutually recognized. For such unregistered marriages, some partners are chosen by teachers, religious teachers, or

community leaders. They typically also lead the marriage ceremony, as this is considered more *afdal*.

Isbat comes from the Arabic *acēbata-yuēbitu-isbatan* which means strengthening. In the popular scientific dictionary, the word *itsbat* is defined as deciding or establishing. Marriage confirmation has actually become a term in Indonesian with a slight revision, namely marriage confirmation. According to the Big Indonesian Dictionary, marriage confirmation is the determination of the truth (validity) of a marriage. Marriage confirmation is the ratification of a marriage that has been carried out according to Islamic law, but is not recorded by the authorized KUA or PPN (Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia Number KMA/032/SK/2006 concerning Guidelines for the Implementation of Duties and Court Administration).

The Marriage Registration Process for the *Sirri* marriage that has been carried out is to obtain a marriage certificate as proof of the validity of the marriage that has been carried out. As explained in Law No. 1 of 1974, Article 2, paragraph (1), a marriage is valid if it is carried out according to Islamic law, and is also explained in Law No. 1 of 1974, Article 2, paragraph (2) that each marriage is recorded according to the applicable laws and regulations. Marriage registration, as described above, aims to create order in society. This is an effort, regulated by law, to protect the dignity and sanctity of marriage, and more specifically, women in married life (Basyir, 2000).

Marriage registration is an administrative activity for a marriage carried out by a Marriage Registrar (PPN) who is based at the Religious Affairs Office (KUA) in the area where the two prospective brides and grooms are getting married, for those who are Muslim, and at the Civil Registry Office (KCS) for those who are non-Muslim (Faridl, 1999).

The purpose of registering a marriage is to provide legal certainty and protection for the parties entering into a marriage, so that the state as an organization that oversees all its citizens will provide authentic evidence that a marriage has occurred, so that the parties can defend the marriage to anyone before the law (Mardani, 2016).

There are several benefits obtained from registering a marriage, namely;

- 1) As valid legal evidence for the marriage events that have been carried out by both parties
- 2) This legal certainty will, in turn, help create a harmonious, loving, and compassionate household. Therefore, registering a marriage will benefit both husband and wife (Khoiruddin, 2019).

Unregistered marriages have negative impacts, namely;

- 1) This marriage does not have any legal force in protecting the rights and fulfillment of the obligations of each party, both husband and wife
- 2) If in the future there is a violation committed by one of the parties, then the injured party cannot legally claim any rights. Perpetrators who are absent from their obligations are not legally obliged to take responsibility for what they have done to their partner. Because the bond established in the marriage is not in accordance with the provisions of marriage law in force in Indonesia and the marriage is considered illegal in the eyes of the law. Thus, if a marriage is entered into without being registered and recorded by a Marriage Registrar, the marriage has the potential to cause harm and disputes over obligations within the marriage bond (Rozalinda, 2014).

Marriages that are carried out and recorded by the Marriage Registrar who is based at the

Religious Affairs Office (KUA) in the area of the two prospective brides and grooms will be accompanied by the issuance of a Marriage Certificate or Marriage Book as legal evidence of state recognition of the marriage that has taken place.

A Marriage Certificate or Marriage Book is an authentic deed made in accordance with the form stipulated by Government Regulation Number 9 of 1975 and made in the place where the Marriage Registrar/Religious Affairs Office employee carries out his duties. The benefit is to confirm and validate the marriage event that occurred.

Based on the description above, the author can conclude that a marriage registered before a Marriage Registrar (PPN) has a very urgent positive impact on both parties, husband or wife. From this fact, it is clear that a married couple who do not have a Marriage Book because their marriage is not registered does not receive legal protection from the state and does not obtain their rights to obtain personal documents required by the state. For example, a Birth Certificate from the Civil Registry Office. This is as stated in Article 7 of the KHI which states that: (1) a marriage can only be proven by a Marriage Certificate made by a Marriage Registrar.

Furthermore, for someone who has had a marriage or marriage in the past or currently that is not registered, aka a sirri marriage or an underhand marriage, to immediately submit an application for marriage confirmation to the Religious Court. This is clearly stated and regulated in Article 7 of the KHI which states that (2) in the case of a marriage that cannot be proven by a Marriage Contract, the marriage confirmation can be submitted to the Religious Court;

The marriage confirmation decree issued by the religious court itself is then used as a basis for registering their marriage with the Marriage Registrar of the Office of Religious Affairs, and then the Office of Religious Affairs will issue a Marriage Book or Marriage Certificate Extract.

Marriage confirmation is the determination of a marriage between a man and a woman as husband and wife that was previously not registered with the relevant authorities, in this case the Marriage Registrar (PPN) located at the Office of Religious Affairs (KUA). The marriage that is confirmed must be one that meets the requirements and pillars of marriage under Islamic law.

In general, people who submit applications for marriage confirmation to the Religious Court are people who married after the enactment of Law Number 1 of 1974 concerning Marriage. However, if seen and observed based on Article 64 of Law Number 1 of 1974 concerning Marriage in conjunction with Government Regulation Number 9 of 1975, then unregistered marriages that can be requested for marriage confirmation are marriages that occurred before the law was enacted. However, considering that the position of marriage confirmation is very much needed by society to maintain order and legal protection and prevent the occurrence of unregistered marriages on a massive scale, the Religious Court judge carried out "ijtihad" with the deviation, then granted the application for marriage confirmation based on the provisions of Article 7 Paragraph (3) letter e. The marriage requested for confirmation is an unregistered marriage but does not conflict with applicable religious law, fulfills the conditions and pillars of marriage, then the Religious Court will grant a request for marriage confirmation even if the marriage was carried out after the enactment of Law No. 1 of 1974 concerning Marriage (Partanto, 1994).

With the birth of Presidential Instruction No. 1 of 1991 dated June 10, 1991 concerning the Compilation of Islamic Law (KHI) and the Decree of the Minister of Religion Number 154 of 1991 concerning the implementation of Presidential Instruction No. 1 of 1991 dated June 10, 1991, has given broader authority to the Religious Courts, as

regulated in Article 7 paragraphs 1, 2, 3 of the Compilation of Islamic Law.

If we look at the description of Article 7 paragraph (2) of the KHI; "In the event that the marriage cannot be proven by a marriage certificate, the marriage confirmation can be submitted to the Religious Court" and Article 7 paragraph (3); "The marriage confirmation submitted to the Religious Court is limited to matters relating to:

- 1) Lost marriage certificate
- 2) The existence of marriage in the context of divorce settlement
- 3) There is doubt about the validity or invalidity of one of the conditions of marriage

This means that KHI has provided authority beyond that granted by law, both Law Number 1 of 1974 concerning Marriage and Law Number 7 of 1989 concerning Religious Courts.

Isbat (determination) is a product of the Religious Court, meaning it is not a real court and is termed *jurisdiktio voluntair*. It is said not to be a court. The truth is, because in this case there is only the applicant, who is asking for something to be determined, namely the determination of marriage. A voluntary case is a case that is in the nature of a request and in which there is no dispute, so there is no opponent. Basically, petition cases cannot be accepted, unless the interests of the law so require (Sujana, 2015).

With the decision to determine the marriage confirmation, the marriage has been legally registered, which means there is a guarantee or legal protection for the status of children, and the position and division of joint assets in the event of a divorce in the marriage as regulated in Chapter VII of Law Number 1 of 1974 concerning assets in marriage.

Article 35 of Law Number 1 of 1974 states that (1) Property acquired during marriage becomes joint property; (2) Property brought by each husband and wife and property acquired by each

as a gift or inheritance is under the control of each as long as the parties do not determine otherwise. Meanwhile, Article 36 of Law Number 1 of 1974 states that:

Regarding joint property, husband or wife can act with the consent of both parties; (2) Regarding their respective assets, husband and wife have full rights to take legal action regarding their assets.

According to Article 37 of Law No. 1 of 1974 concerning Marriage in conjunction with Articles 96 and 97 of the Compilation of Islamic Law (KHI), it is stated that if a marriage ends due to divorce or death, each husband and wife shall receive half of the joint assets acquired during the marriage. This provision is in line with the jurisprudence of the Supreme Court of the Republic of Indonesia No. 424.K/sip.1959 dated December 9, 1959, which contains a legal abstraction that in the event of a divorce, each party (husband and wife) shall receive half of their joint assets. If a husband and wife divorce and the issue of their joint assets is resolved through deliberation or peace, then the division can be determined based on the agreement or willingness of both parties. This method is legally valid and is the best way to resolve it. In resolving this problem, it is permissible for one party to receive a larger or smaller percentage than the other, depending on the agreement and without any element of coercion (Soemitro, 1999).

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

The conclusion that can be drawn from this research is that many people in Hamparan Perak District carry out *sirri* marriages or underhand marriages due to economic factors and the lack of public knowledge about the impact or consequences when divorce occurs as well as the lack of role of the government, religious scholars and community leaders in socializing marriages registered at the KUA office.

Properly, a marriage should not only be valid according to religion, but also valid according to State. Marriages conducted according to the laws of each religion are valid according to their respective religions, but not according to state law. Such marriages, as long as they are not registered, are considered underhand (sirri) and lack legal certainty from the state regarding the marital relationship. Consequently, this will impact the status of the husband and wife within the marriage, the status of children born within the marriage, and the status of joint property within the marriage.

Therefore, to overcome the possibility of joint property problems in a sirri marriage or underhand marriage, the Compilation of Islamic Law (KHI) regulates the existence of isbat nikah in the context of divorce to the Religious Court. With the existence of isbat nikah, the legal consequences apply to the rules regarding joint property as stipulated in Article 37 of Law No. 1 of 1974 concerning marriage in conjunction with Articles 96 and 97 of the Compilation of Islamic Law (KHI) which state that if a marriage ends due to divorce or death, then each husband and wife receive half of the joint property acquired during the marriage. This provision is in line with the jurisprudence of the Supreme Court of the Republic of Indonesia No. 424.K/sip.1959 dated December 9, 1959 which contains a legal abstraction that if a divorce occurs, then each party (husband and wife) receives half from their joint assets. If a husband and wife divorce, then there are property problems. If it is done through deliberation or peace, then the distribution can be determined based on the agreement or willingness of both parties.

Furthermore, based on the results obtained in the field, registered marriages can fulfill and create social order, thereby creating harmony and harmony in community life. Therefore, if viewed from the perspective of its benefits, the author agrees with what was conveyed by Abdul Halim in

his book *Ijtihad Kontemper* that placing marriage registration as a valid requirement can be done by applying *ijtihad insya'i* (a new form of *ijtihad*) using the principle of "repelling harm is prioritized over bringing good" needs to receive appreciation from Indonesian scholars as well as Muslim thinkers and intellectuals.

B. Suggestions

Based on the findings of this study, it is recommended that the government, particularly the Office of Religious Affairs (KUA), Religious Courts, and local governments, intensify public education and legal awareness programs regarding the importance of marriage registration. Many people still practice unregistered marriages due to religious, cultural, and economic considerations, without fully understanding the legal consequences that may arise for spouses and children in the future.

Furthermore, efforts to facilitate marriage registration and marriage confirmation (*itsbat nikah*) should be expanded, especially in rural and economically disadvantaged communities. Mobile services, legal aid programs, and periodic mass *itsbat nikah* activities can help reduce the number of unregistered marriages and provide legal certainty for families who have previously married according to Islamic law but lack official state recognition.

In addition, religious leaders, community leaders, and marriage officiants should actively encourage prospective couples to register their marriages through the proper legal procedures. Their involvement is essential because they hold significant influence within the community and can help bridge the gap between religious practices and state legal requirements.

Finally, future researchers are encouraged to conduct broader studies concerning the social, economic, and legal impacts of unregistered marriages in different regions of Indonesia. Such studies may contribute to the development of more effective policies and legal frameworks

aimed at protecting the rights of spouses, children, and family property while promoting legal certainty and social welfare.

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