

OPTIMIZATION OF MARRIAGE REGISTRATION TO REALIZE LEGAL CERTAINTY AND CIVIL RIGHTS PROTECTION

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Keyword

Marriage Registration, Legal
Certainty, Civil Rights
Protection

ABSTRACT

Marriage has an important role in shaping families and community life. In Indonesia, Law Number 1 of 1974 has stipulated that marriage registration must be carried out to ensure legal certainty and protection of civil rights such as maintenance rights, inheritance rights, and rights to common property. This study aims to analyze the legal politics of marriage registration, the legal impact of registered and unregistered marriages, and offer an ideal form of fair and useful registration. The research method used is normative law with a legislative approach. The results of the study show that marriage registration is not only administrative, but also important for the certainty of family legal status. Optimizing recording through regulatory reform and public education is needed to strengthen legal protection in Indonesia.

INTRODUCTION

Marriage is a universal institution that exists worldwide, serving as the foundation of building a civilized and sustainable society. The issue of the validity of marriage and its registration is of particular concern globally, especially with the increasing recognition of civil rights, gender justice, and legal protection for family members, particularly women and children. Marriage registration is not only an administrative requirement but a critical condition for the legal recognition of family relationships. The absence of registration can lead to uncertainty regarding legal status, limited access to inheritance, child protection, and social benefits. Modern legal systems worldwide emphasize the importance of marriage registration to ensure the protection of basic civil rights (Djubaidah, 2010; Bohr, 2017; Boulware et al., 2020). In many countries, marriage registration is considered essential for ensuring equality before the law and to guarantee access to the rights and benefits afforded to legally married couples (Trivedi et al., 2019; Solaiman, 2021; Moser et al., 2020).

The issue of marriage registration in Indonesia arises from various challenges. First, a significant portion of the population still believes that religious law is sufficient for validating marriages, rendering state registration unnecessary. Second, some religious groups argue the theological reason that marriage registration is not obligatory according to Islamic teachings, further complicating the issue (Djubaidah, 2010; Baihaqi & Hasbullah, 2016). Additionally, economic factors play a role, as some individuals view the administrative costs of registration as a burden, prompting them to marry without

official documentation. Furthermore, discriminatory administrative practices exist against religious groups or beliefs not officially recognized by the state, such as the Sunda Wiwitan or Parmalin communities, hindering their ability to legally register marriages (Djubaidah, 2010; Anwar et al., 2019; Badawi & Chia, 2021). These factors contribute to the complexities surrounding marriage registration and underscore the need for comprehensive reforms in Indonesia's civil registration system (Marjuni & Yulianto, 2018; Sari et al., 2022; Bintoro, 2021).

The impact of unregistered marriages is profound and multifaceted. Legally, couples in unregistered marriages struggle to obtain civil rights protection, with women and children facing the brunt of the disadvantages, losing access to rights like maintenance, inheritance, birth certificates for children, and joint property (Wantjik Saleh, 1974; Ekman et al., 2018; Law No. 23 of 2006). The uncertainty of family status also leads to structural injustices, exacerbating socio-economic marginalization for certain groups. Over time, the non-compliance with the obligation of marriage registration can undermine the state's efforts to build a reliable and accurate population administration system, further contributing to social inequities and legal exclusion (Law No. 23 of 2006; Swaleh & Muthiah, 2020; Masruri et al., 2021). The lack of proper documentation also hampers government efforts to ensure social justice and full protection of individual rights under the law.

This study focuses on marriage registration as the independent variable (X) and justice, legal certainty, and legal utility as dependent variables (Y). Marriage registration is governed by national legal instruments such as Law No. 1 of 1974 concerning Marriage, Law No. 23 of 2006 concerning Population Administration, and the Compilation of Islamic Law (KHI). This registration process is essential to ensure that the legal rights of individuals, particularly in family relationships, are formally recognized by the state. The justice, legal certainty, and utility of marriage registration serve as critical indicators for evaluating the effectiveness of the marriage registration system in providing protection and guaranteeing the rights of all citizens (Azizah, 2020; Muliawati, 2019; Sumarny et al., 2020).

The novelty in this study lies in the approach of optimizing marriage registration by paying attention to the aspect of substantive justice, not just procedural, in the perspective of national law. Different from previous research that only focused on normative aspects, this study integrates the need for regulatory reform with the socio-cultural factors that develop in society. This research also emphasizes the importance of bridging public understanding of the value of recording not just an administrative obligation, but an integral part of human rights protection.

The urgency of this research is very high considering the prevalence of unregistered marriage in Indonesia, which has a direct impact on legal uncertainty and potential civil rights violations. In addition, in the era of globalization and digitization of population administration, the existence of accurate data on marital status has become very important for the management of the modern country. Without optimal marriage registration, it will

be difficult for the state to carry out its legal protection function optimally and uphold social justice at all levels of society.

The purpose of this study is to describe and analyze the legal politics related to marriage registration in Law Number 1 of 1974, identify the legal consequences of registered and unregistered marriages, and offer the formulation of the ideal form of marriage registration so that it can realize justice, legal certainty, and legal benefits for the Indonesian people.

The benefits of this research are expected to make a theoretical contribution to the development of legal science, especially in the field of family law and population administration. Practically, this research can be a reference for the government, legislative institutions, and marriage registrars in designing policies that are more adaptive to the needs of the community, as well as increasing the legal awareness of the community about the importance of marriage registration for the protection of their rights.

METHOD

This research is a qualitative legal research with a descriptive approach. This research is designed to provide an in-depth understanding of marriage registration in the national legal system and examine how the optimization of registration can improve justice, legal certainty, and benefits for the community. This study does not aim to test the hypothesis statistically, but to systematically describe the legal phenomena related to the practice of marriage registration in Indonesia.

This research was carried out at the Faculty of Law, Trisakti University and the National Library of the Republic of Indonesia, which is a data and legal reference center in Jakarta. This location was chosen to support research needs that require complete primary and secondary legal sources. This research took place from November 2024 to July 2025, taking into account the stages of literature study, field data collection, data analysis, and the preparation of research results.

The population in this study includes all national regulations related to marriage registration, legal doctrine from academics, and empirical data related to marriage registration practices in the community. The research sample was taken purposively, namely selecting relevant data sources and having depth of information on the research problem. The main informants consist of family law academics, legal practitioners, and employees of the Office of Religious Affairs (KUA) who are directly involved in the registration of marriages.

This research instrument is in the form of literature study guidelines and interview guidelines. Literature study guidelines are used to review laws and regulations, textbooks, scientific articles, and court decisions relevant to the topic of marriage registration. Meanwhile, interview guidelines are used to obtain primary data from competent sources, such as legal academics, KUA employees, and family law practitioners.

RESULTS AND DISCUSSION

Legal Basis for Marriage Registration According to the Law in Indonesia.

Marriage registration is an instrument created by the government to administer marriage. Laws and Regulations in Indonesia that regulate marriage registration are: Law No. 1 of 1974 concerning Marriage, Law No. 2 of 1946 concerning Marriage Registration, Compilation of Islamic Law, Law No. 23 of 2006 concerning Population Administration, and Regulation of the Minister of Religion Number 20 of 2019 concerning Marriage Registration.

According to Law No.2 of 1946 concerning Registration of Marriages, Talak and Referral,

It is stated in Article 1 paragraph (1) that "nikah carried out according to the Islamic religion is hereinafter called nikah, supervised by the Marriage Registrar appointed by the Minister of Religion or by an appointed employee". Article 1 paragraph 2 of Law No. 2 of 1946 stipulates that only employees appointed by the Minister of Religion or by employees appointed by him are entitled to supervise marriage and receive notices of talaq and referral.

Law Number 22 of 1946 also regulates the sanctions that will be imposed on violations of the implementation of the marriage contract as stipulated in Article 3 paragraph (1).

"Whoever performs a marriage contract with a woman who is not under the supervision of the employee referred to in paragraph (2) of Article 1 or his representative shall be punished with a fine of up to Rp.50.00 (fifty rupiah)."

According to Neng Djubaedah who included Article 3 paragraph 5 which regulates the registration of marriages based on the judge's decision, that: "..... If there are people who marry without sufficient supervision requirements...." So *the police* judge (District Court Clerk) concerned sends a copy of his decision to the Marriage Registrar concerned and the employee enters the marriage... in the respective registration book by mentioning the judge's decree stating it.

He also explained that what is meant by a person who is married without sufficient supervision requirements is a marriage that is not carried out in front of the Marriage Registrar or a marriage under the hand or a marriage that has not been registered as referred to in Article 2 paragraph (1) and Article 3 paragraph (1) of Law Number 22 of 1946. He also argued that Article 3 paragraph (5) of Law Number 22 of 1946 is accommodated by Article 7 of the KHI regarding itsbat nikah where not all marriages under hand can request itsbat nikah, this happens because Article 7 of KHI regulates the reasons for submitting itsbat nikah, namely: (1) because there is a purpose for settling the divorce, (2) the marriage certificate is lost, (3) there is doubt about the marriage requirements that must be met, (4) marriages that occurred before Law No. 1 of 1946, (5) marriages that are performed by those who do not have marriage obstacles according to Law No. 1 of 1974.

According to Law No.1 of 1974 concerning Marriage

That the registration of marriage cannot be separated from Article 1 of Law No. 1 of 1974. The regulation of Article 1 explains how the actual function of marriage registration is in a marriage. Article 1 of Law No. 1 of 1974 formulates that marriage is "the bond of birth and mind between a man and a woman to form a happy and eternal family based on the One Godhead."

In the explanation of Article 1 it is explained that: "As a country based on Pancasila, where the first precept is the One Godhead, marriage has a very close relationship with religion, so that marriage not only has an element of birth but also an element of inner certainty that has an important role. Forming a happy family close to the relationship with the offspring which is also the purpose of marriage, maintenance, and education are the rights and obligations of parents.

Marriage based on the One God is marriage based on religion. Regarding Hazaairin's interpretation of Article 29 paragraph (1) of the 1945 Constitution, the definition based on Article 1 of Law Number 1 of 1974 which determines marriage ... based on the One Godhead, it can be interpreted as follows:

"In the Republic of Indonesia, there shall be no Marriage Law that is contrary to Islamic rules for Muslims, or Marriage Law that is contrary to Christian principles for Christians, or Marriage Law that is contrary to Hindu rules for Hindus, or Marriage Law that is contrary to the morality of Buddhism for Buddhists, or Marriage Law based on the teachings of Confucian Hu Cu for Confucians, simply in carrying out the Marriage Law requires the assistance or mediation of State power."

The regulation regarding the registration of marriages in Law No. 1 of 1974 is regulated in article 2 paragraph 2 which stipulates that "each marriage is recorded in accordance with the applicable laws and regulations". In the book Marriage Registration and Unrecorded Marriages, Neng Djubaedah argued that: Article 2 paragraph (2) is a regulation of an important event, then what is regulated in Article 2 paragraph (1) is a legal event which means that the important event cannot annul a legal petristiwa.

This can be seen from the explanation of Article 2: "With the formulation in Article 2 paragraph (1), there is no marriage outside the law of each religion and its beliefs are in accordance with the 1945 Constitution.

What is meant by the law of each religion and belief is included in the provisions that apply to the religious group and its beliefs as long as it does not contradict or is not otherwise specified in this law.

It is stated that: Marriage is legal, if it is carried out according to the laws of each religion and its beliefs. Each marriage is recorded according to the applicable laws and regulations. In the book Marriage Registration and Marriage is not recorded, Neng Djubaedah argues that Article 2 paragraph (2) paragraph (2) is a regulation of important events, what is regulated in Article 2 paragraph (1) is a legal event which means that the important event cannot annul a legal event, this can be seen in the explanation of Article 2.

"With the formulation in Article 2 paragraph (1) of Law No. 1 of 1974, there is no marriage outside the law of each religion and belief, in accordance with the 1945 Constitution. What is meant by the laws of each religion and belief includes the provisions that apply to their religious groups and beliefs as long as they are not contradictory or otherwise specified in this law.

According to Mrs. Neng Djubaedah gave her views on the formulation of the explanation of article 2 paragraph 2 that:

"The laws of each religion and its beliefs include the provisions that apply to their religious groups and beliefs as long as they are not contradictory or otherwise specified in this law" must be related to the definition of marriage according to Article 22 paragraph (1) of Law Number 1 of 1974.

Furthermore, in his opinion that:

"Therefore, what is meant by religious law includes provisions that apply to religious groups as long as they are not contradictory or otherwise specified in this law" for Muslims is religious law in accordance with Article 2 paragraph (1) *juncto* Article 1 of Law Number 1 of 1974 *juncto* Islam which has been resected or accepted in Customary Law based on the theory of *receptie*. Therefore, in the field of Islamic Marriage Law in Indonesia, the *theory of receptie* has met its end based on Article 1 and Article 2 paragraph (1) of Law Number 1 of 1974 *juncto* the origin of 29 paragraph (1) of the 1945 Constitution.

Based on expert opinions and regulations in Law No. 1 of 1974 concerning marriage, the author concludes that the function of marriage registration as regulated in Law No. 1 of 1974 is an administrative obligation for Indonesian citizens. The administrative function is important, because with good administration the record can be seen if necessary, but with the regulation in Article 1 of Law No. 1 of 1974 which if we look at the opinion of experts that marriage is based on religion, then an administrative function cannot be a benchmark for whether what is based on religion becomes valid or not.

Marriage Registration According to Government Regulation Number 9 of 1975

In Government Regulation Number 9 of 1975, the regulations regarding marriage registration are regulated in Article 2. The content of Article 2 itself is: (1) The registration of marriages of those who carry out their marriages according to the Islamic religion, is carried out by the Registrar as referred to in Law Number 32 of 1954 concerning Marriage Registration, Talak, and Referral.

(2) The registration of marriages of those who carry out their marriages according to their religion and beliefs other than Islam, is carried out by the Marriage Registrar at the Civil Registry Office as intended in various laws regarding marriage registration.

(3) Without prejudice to the provisions that are specifically applicable to the procedure for marriage registration based on various applicable regulations, the procedure for registration of marriage shall be carried out as specified in Articles 3 to 9 of this Government Regulation.

Marriage Registration According to the Compilation of Islamic Law

The Compilation of Islamic Law (KHI) regulates the registration of marriages in article 5 paragraphs (1) and (2). The setting contains: In order to ensure the order of marriage for the Islamic community, every marriage must be recorded.

Marriage registration as mentioned in paragraph (1) is carried out by the Marriage Registrar as stipulated in Law Number 22 of 1946 jo. Law Number 32 of 1954.

In paragraph (1) there is the word "to ensure the order of marriage.." These words are words that the author concludes as an administrative function, this is because the purpose of registering marriage as stipulated in Article 5 paragraph (1) is only for an administrative order.

Neng Djubaedah argued that in Article 5 paragraph (1) of the KHI it is stated that marriage must be recorded, this is a manifestation of the General Explanation number 4 letter b of Law Number 1 of 1974 concerning Marriage as quoted above. But we "must note" in the General Explanation number 4 letter b does not mean that the registration of marriage is equivalent to or commensurate with the provisions of the validity of marriage as determined in Article 2 paragraph (1) juncto Article 1 of the Marriage Law as interpreted by Neng Djubaedah and the author quoted earlier. Article 2 paragraph (2) of the Marriage Law does not result in the marriage becoming invalid if it is not recorded.

The term "must be recorded" in Article 5 paragraph (1) of the KHI can also be interpreted that the purpose of recording is only to ensure the order of marriage for the Islamic community alone.

Arrangements regarding marriage registration other than in article 5 are also regulated in Article 6 paragraphs (1) and (2) of the Compilation of Islamic Law. The setup contains: To comply with the provisions of Article 5, every marriage must be held in front of and under the supervision of the Marriage Registrar.

Marriages that are carried out outside the supervision of the Marriage Registrar do not have the force of law.

The regulation in article 6 paragraph 2 is an arrangement that is contrary to the purpose of the marriage registration regulation in article 5 paragraph (1), namely as an administrative order. The regulation in article 6 paragraph (2) stipulates that a marriage registration has legal consequences. The words "... has no force of law" makes every person who marries and the marriage is not recorded, will not be considered by national law as a valid marriage.

Neng Djubaedah argues: "Article 6 paragraph (2) of the KHI seems different from the previous articles in this article there is a rule that weakens or paralyzes a valid marriage based on Islamic Law that has not been recorded in the KUA Kec, or what Neng Djubaedah called in his book as "unregistered marriage" or "unregistered marriage". The weakening or paralysis of Islamic Marriage Law after the abolition of secularization and receptive theory in Law Number 1 of 1974, was resurfaced through Article 6 paragraph (2) of the KHI, then strengthened in Article 5 paragraph (2) in conjunction with Article 6 paragraph (4) in conjunction with Article 143 of the 2007 RUU-HM-PA-BPerm.

Further in his book Neng Djubaedah argues:

"The provisions of Article 6 paragraph (2) of the KHI are not in accordance with other provisions in the KHI, namely: first, the provisions of Article 2 of the KHI which formulate the definition of marriage, second, the provisions of Article 3 of the KHI which formulate the purpose of marriage and third, the provisions of Article 4 of the KHI which determine the validity of marriage according to Islamic Law in accordance with Article 2 paragraph (1) of Law Number 1 of 1974. The error in article 6 paragraph (2) should not continue to cause legal uncertainty, the jurists must think about how to prevent this Article from causing legal injustice for some Indonesian citizens.

Marriage Registration According to Law Number 23 of 2006 concerning Population Administration

Regulations regarding marriage registration in Law No. 23 of 2006 are regulated in Article 34 paragraphs 1-7. The regulation in Article 34 paragraphs (1) – (7) contains:

A valid marriage based on the provisions of Laws and Regulations must be reported by the Resident to the Implementing Agency at the place where the marriage occurred no later than 60 (sixty) days from the date of marriage.

Based on the report as referred to in paragraph (1), the Civil Registration official records in the register of the Marriage Certificate and issues a Marriage Certificate Citation.

The Marriage Certificate Citation as intended in paragraph (2) is given to the husband and wife, respectively.

Reporting as intended in paragraph (1) is carried out by Muslim Residents to the District KUA.

The data on the results of recording the events as referred to in paragraph (4) and in Article 8 paragraph (2) must be submitted by the District KUA to the Implementing Agency no later than 10 (ten) days after the marriage registration is carried out.

The results of data recording as intended in paragraph (5) do not require the issuance of a citation of the Civil Registration deed.

1. At the sub-district level, the report as intended in paragraph (1) is carried out at the UPTD of the Implementing Agency.

In the author's opinion, that the explanation of Article 34 paragraph (1). The explanation of Article 34 paragraph (1) explains that what is meant by marriage is the innate bond between a man and a woman as husband and wife in accordance with the provisions of the law, the explanation states that a valid marriage for Muslims is a marriage according to religion in accordance with the provisions of Article 2 paragraph (1) of Law No. 1 of 1974.

Based on the explanation of the article and the opinions of experts, the author concludes that the marriage registration regulation in Law No. 23 of 2006 does not regulate that marriage registration can have certain legal consequences if it is not carried out. Law No. 23 of 2006 views marriage registration as an administrative obligation.

Marriage Registration According to Islamic Law

Islamic law does not regulate the registration of marriages, but scholars have issued opinions on the importance of witnesses in marriage who can prove the validity of a marriage, the following are some of the views of scholars regarding witnesses that must be present in a marriage, here are the opinions of Imam Maliki and Imam Shafii:

Imam Maliki

He emphasized the function of witnesses, namely announcements, he differentiated between serial marriages and marriages without evidence. Nikah siri, is a marriage that is deliberately kept secret by the parties involved in the marriage. This marriage law is invalid. On the other hand, the law of marriage that has no evidence but is announced to the public is valid.

Imam Syafii

According to him, there must be witnesses in marriage, witnesses must be two fair men. So in essence, all these scholars require the presence of witnesses in the marriage contract, so that in Islam there is no device to administer a marriage such as marriage registration in Indonesia, but the witness functions to witness if needed one day can testify that a marriage he witnesses is a valid marriage.

CONCLUSION

This research aims to examine the legal politics of marriage registration, analyze the legal consequences of registered and unregistered marriages, and formulate an ideal form of marriage registration that is fair, ensures legal certainty, and provides benefits for the Indonesian people. The main findings of this study suggest that marriage registration cannot be seen solely as an administrative obligation, but rather as a vital instrument for the protection of the civil rights of citizens, especially women and children. Registration becomes a bridge that connects private events to the legal recognition of the state, which has direct implications for the validity of family relations and the protection of civil rights. The study's main contribution to the legal literature is to reinforce the approach that marriage registration should be placed within the framework of human rights, not merely a matter of state administration. This research also enriches the discourse on the importance of regulatory reform to clarify the legal status of unregistered marriage and strengthen the state's function in protecting family rights. This study emphasizes that strengthening recording regulations must be accompanied by an inclusive socialization approach and community empowerment. The limitation of this study is that the focus still rests on normative analysis and literature studies, without being equipped with a broader empirical survey of public perceptions in various regions. Therefore, for further research, it is recommended to conduct field studies with a quantitative approach or a combination of methods to obtain more representative empirical data on the practice and challenges of marriage registration at the local level. In addition, in-depth research on the digitization model of marriage registration is also important to answer the challenges of population administration in the modern era.

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