



YOUNG WIVES' RIGHTS OF UNREGISTERED MARRIAGE TO JOINT PROPERTY BASED ON ISLAMIC AND POSITIVE LAW

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ABSTRAK

Di Indonesia, pernikahan diatur oleh dua perangkat ketentuan hukum: norma-norma yang menguntungkan dan aturan Islam, yang terakhir didasarkan pada Alquran, Hadis, Imam Madzhab, dan pendapat mutaakhkhirin Ulama. Adapun apa yang dimaksud dengan peraturan perundang-undangan positif dalam konteks ini, atau undang-undang no. 16 tahun 2019, mengubah undang-undang no. 9 Tahun 1975 tentang Penjelasan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, kemudian Instruksi Presiden Nomor 1 Tahun 1991 tentang Penyusunan Aturan Islam. Hal ini menunjukkan bahwa pernikahan adalah sah tanpa memandang apakah dilakukan di depan pencatat nikah atau di depan orang yang memahami hukum pernikahan Islam (Kiyai, ustad, dll). Yang kedua diperbolehkan. Karena keduanya sah, konsekuensi dari aturan terkait pernikahan adalah identik. Dalam prakteknya, pengantin muda menikah dengan tangan seolah-olah tidak ada perlindungan hukum untuk harta bersama jika terjadi perceraian atau kematian. Orang yang melakukan penelitian ini berharap dapat menemukan, mengembangkan, dan memunculkan ide-ide baru di bidang hukum, khususnya di bidang perlindungan hak-hak anak muda yang menikah dengan harta bersama.

Kata Kunci : perkawinan di luar nikah, perlindungan hukum, harta bersama.

PENDAHULUAN

Marriage is not only an act of mu'amalah worship (worship of fellow humans), but it is also an act of mahdhoh worship (direct worship to Allah). Even normatively, the law can become required in certain circumstances. This is based on Allah's word, which means: "And when you marry those who are single among you and the pious among your male and female slaves, Allah will make them wealthy by His generosity (Surah An-Nur: 32).

This text highlights that those who are mentally capable can be asked by God to expedite the marriage process even if they lack economic capability. Even in hadith, hastening the marriage is advocated, as in the following hadith:

According to Ibn Mas'ud, he stated: The Messenger of Allah (SAW) said, "O young men, whosoever among you is capable of marriage, marry, for marriage is more capable of

lowering the gaze and protecting the genitals. And whoever is unable, let him fast, for fasting serves as a curb on lust for him." (Honorable Jamaat).

As a result, marriage should not be delayed, particularly for those who are intellectually and financially capable.

Marriage in Indonesia is governed by two sets of legal provisions: favourable rules and Islamic regulations. Positive law here refers to Law No. 16 of 2019 amending Law No. 1 of 1974 on Marriage, Government Regulation No. 9 of 1975 on the Clarification of Law No. 1/1974 on Marriage, and Presidential Instruction No. 1/1991 on the formation of Islamic principles.

Islamic laws are defined as the Qur'an, Hadith, Imam Madzhab's opinions, and the opinions of all scholars, in their entirety, which are then employed as a third source of law in the form of ijtihad outcomes.

Positive law controls the legitimacy of marriage under article 14 of the Compendium of Islamic Law (KHI), which states that: "To celebrate a marriage, the following requirements must be met:

1. Future husband
2. Future Wife
3. Parents marry
4. Two witnesses and
5. Contract of marriage

Thus, if the marriage does not fulfill all five of the aforementioned requirements, or if one of the parties is unable to do so, the marriage cannot be maintained or is deemed null and void by law.

According to Islamic law, marriage is lawful if the following criteria are met:

- a. The party celebrating the wedding is the prospective husband and future wife;
- b. Parents marry.
- c. Proof by two individuals, and d. Ijab and qabul (Mohd Idris Ramulyo, 1999;1).

The preceding explanation outlines the requirements for a legitimate marriage, whether Islamic or positive law-based. There is no difference in principle. The distinction is one of formal law (technical documents) that they comprehend (kiyai, ustadz, etc.) about Islamic marital law.

Machica bint H. Mochtar Ibrahim is Aisyah Mochtar alias Machica bint H. Mochtar Ibrahim. For a young bride who marries with her own hands and meets all five of the legal requirements for a lawful marriage, it is as if she is not protected by law, as if she has forfeited her right to marry and obtain joint property rights. Due to the fact that both are legal, the legal ramifications of marriage are same. Nonetheless, discrimination exists in practice in society, as demonstrated by the incident involving a public figure named Hj.

Underhand marriages, or sirri marriages, are prevalent in the society. They occur when marriages are performed without being registered with the Marriage Registrar (PPN) (hidden marriages). Underhand marriage is permitted if it satisfies the conditions and pillars of marriage, but it is prohibited if a madharat remains. Marriage must be recorded formally in an authorized institution as a safeguard against negative/madharat consequences (sadden lidz-dzari'ah) (Secretariat of the MUI, Jakarta: 2010:528).

According to Article 2 of Marriage Law No. 1 of 1974, every marriage is formally recorded at the Bureau of Religious Affairs. The Religious Affairs Bureau for Muslims and the Civil Registry Office for non-Muslim Muslims are the agencies that can perform marriages (Happy Susanto, 2007:22).

RESEARCH METHOD

This research employs analytical narrative technique, which entails recounting previous cases and then assessing current ones using data that has been acquired, processed, and assembled based on the theories and concepts employed. (1986; Soerjono Soekanto; 3).

The approach is normative in nature, consisting of the examination and review of primary, secondary, and tertiary regulatory data. (1985; Sri Mamudji; 14): A review of the legal literature was undertaken through the examination of library papers and secondary sources. 118-119 (Amiruddin, 2004). These data contain the following:

- 1) Primary regulatory documents, namely binding regulatory documents, namely:
 - a. Regarding Marriage pursuant to Law No. 1 of 1974
 - b. Regarding the Application of Marriage pursuant to Government Regulation No. 9/1975
 - c. Regarding the Compilation of Islamic Law pursuant to Presidential Instruction No. 1/1991; d. Court decision.
- 2) Secondary regulatory materials, meaning regulatory documents that provide information about primary regulatory documents, namely manuals compiled by influential legal professionals;
- 3) Tertiary legal publications, namely legal dictionaries that describe the activities of the primary rule.

Additionally, we obtained tertiary documents from the news and the internet, most notably data on victims in abusive marriages. It turns out that many abusers marry in this manner, and the majority of them escape disgrace.

RESULTS AND DISCUSSION

A. Unregistered Marriage Phenomenon

Indonesia, with a population of approximately 273,500,000 (in 2020), is dominated by Muslim citizens, meaning that Indonesia is occupied by 218,800,000 citizens who are Muslim. This indicates the complexity of religious issues in Indonesia for those who are Muslim, one of which is the issue of underhand marriage, for example, the phenomenon of the unregistered marriage of Machica bint H. Mochtar Ibrahim.

Accompanied by the married parents of the late H. Mochtar Ibrahim, assisted by two witnesses, each named the late KH.M. Yusuf Usman and Risman, with a dowry in the form of a set of prayer tools, 2,000 riyals, a set of gold jewellery, diamonds paid for in cash and with the approval of the wali and qobul which was pronounced legally by a man named Dr Moerdiono.

Machica bint H. Mochtar Ibrahim's marriage is prima facie contrary to article 2 paragraph (2) of the law on marriage organization: "All marriages are recorded according to the applicable laws and regulations". This indicates that the marriage is invalid.

Therefore, on June 14, 2010, Machica applied to the Registrar of the Constitutional Court with a certificate of receipt of file no. 211/PAN.MK/2010 and registered on June 23, 2010, with no. 46/PUUVIII/2010, corrected and accepted at the Registrar's Office of the Constitutional Court on August 9, 2010.

Application subject

Considering whereas the complainants who are individual Indonesian citizens requesting a review are contrary to the provisions of Article 2 (2) and Article 43 (1) of the Marriage Law Number 1 of 1974 (later referred to as marriage), which essentially follows:

- a. According to the Petitioners, the provisions of Article 2 (2) and Article 43 (1) of the Marriage Law created regulatory uncertainty, resulting in harm to the plaintiff, particularly with regard to the use of state civil law and the status of children's regulations, the marriage output of actor I.
- b. the plaintiffs' constitutional rights have been violated in accordance with marriage law standards, which is unjust and detrimental because the marriage of Actors I is valid and by the According to the constitutional provisions contained in Article 28B paragraph (1) of the 1945 Constitution, the marriage of Actors I, who was born according to the pillars of marriage, is legal but is constrained by Article 2 of the Marriage Law; as a result, it is null and void under the applicable laws and regulations. On the other hand, this discriminatory approach generates complications because the legal status of children is unclear.
- c. Finally, the suit asserts, the quo provision favors unequal treatment before the law. It results in unequal treatment; so, the plaintiff believes that a quo provision violates Article 28B paragraphs (1) and (2) and Article 28D paragraph (1) of the 1945 Constitution.

Verdict

- Distribute candidate applications to multiple individuals
- Article 43 paragraph 1 of Law No. 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1, Supplement to the State Gazette of the Republic of Indonesia of 1974 Number 3019) states: "Only children born out of wedlock have civil interactions with the mother and children of the mother's family," which is contrary to the Constitution's intended use. The Republic of Indonesia was established in 1945 with the stated goal of eradicating civil interactions between men, as demonstrated by science, technology, and other restrictions. They discover that they have blood relations such as their father
- Refuse the plaintiff's request for more things
- Ordered to publish this decision in the Republic of Indonesia's State Gazette, if any

The preceding statement is based on the judgement of the Indonesian Constitutional Court No. 46/PUU-VIII/2010. This demonstrates that Hj. Aisyah Mochtar alias Machica bint H. Mochtar Ibrahim married a guy named Drs. Moerdiono and that the marriage was not

recorded with the Office of Religious Affairs (KUA). The union is lawful. As a result, all legal consequences, including the ability to receive joint property, are inherent.

B. Requirements for valid marriage

The validity of a marriage is governed by Article 14 of the Compendium of Islamic Law (KHI), which states: "In order to celebrate a wedding, the following are required:

- a. future husband
- b. future wife
- c. the marriage couple's parents.
- d. two witnesses and
- e. Ijab and Qobul.

According to this passage, if the five prerequisites listed above are not met, the marriage is deemed null and void.

There are still five foundations of marriage in classical fiqh literature, based on Imam Al-Shafi'I, namely:

- a. Future husband
- b. Future wife
- c. Parents of marriage couple
- d. Two witnesses
- e. Shighat/Akad e. (al Jaziri, Juz IV, st:12)

The preceding summary describes the requirements for a lawful marriage under both Indonesian and Islamic law; there is no distinction. It could even be argued to be identical. The distinction is demonstrated by the presence or lack of a marriage certificate. If marriage is accompanied by evidence of a marriage certificate under positive law, marriage is not a marriage certificate under Islamic law.

C. Joint Property

Joint property (Eman Suparman, 2005; 418) are derived property from a joint venture acquired during the marriage's duration. Divorce or suicide in surah an-Nisa verse 32, Allah states: "... what they earn, and a portion of what they earn is reserved for women..."

The terms *iktasabuu* and *iktasabna* are interpreted in light of the term *kasaba*. The addition of the alphabet *ta'* as *iktasabu*, in accordance with Quraish Shihab's seriousness and additional business, and in conjunction with the revelation of this verse regarding the ambitions of the Prophet SAW's wife. Umm Salamah, who explained to the Messenger of Allah that "men fight to take up arms against the enemy, but women do not, and we are also women who accept some according to men's share," explained that every person, men and women alike, receives God's grace in global life as a reward for their efforts or based on their rights, and thus expecting something without rights is unjust (Eman Suparman, 2005; 418).

The preceding description demonstrates that the rights and obligations of husband and wife are non-negotiable in marriage. These rights and obligations, including shared property rights, are immediately linked to a marriage contract.

In Indonesia, households (families) possess four distinct categories of assets, as Muhibin (2009;58) explains:

- a. Prior to marriage, wealth is acquired through the product of each other's business. It is reported that the celibacy property is used in Sumatra. In Bali, it is stated that property is used to acquire wealth.
- b. The bride and groom received the property they brought when they married, which could have been business money, household goods, or a location to reside for husband and wife. It is believed that the original property is used in Minangkabau.
- c. Wealth is acquired through marriage, although in Central Java, East Java, and Yogya, it is believed to be used gawan assets as a result of a gift or inheritance from parents or relatives. It is said that commercial items are used in Jakarta. It is reported that temperature items are used in Banten. It is believed that haraenta tuha is used in Aceh. It is believed that pinibit is used in Dayak Ngayu, and that heritage Tinggi is used in Minangkabau.
- d. Assets acquired during marriage for the purpose of conducting business with or in another person's business are considered to be livelihood assets.

Divorce, whether due to death or separate, the Compilation of Islamic Law governs the exercise of husband and wife's rights strictly, as stated in article 97: "Widows or widowers are each entitled to one-half of their property, unless the marital agreement provides otherwise."

CONCLUSION

The rights of young wives married under the auspices of joint assets will be emphasized, based on the descriptions discussed previously, beginning with the legality of marriages, it can be concluded that:

1. The requirements for a valid marriage are based on favorable rules and Islamic law. There is no discernible difference; what differentiates them is the presence or lack of a marriage certificate.
2. Because an illegal marriage is legitimate under the rules, all of the regulations that accompany it are legal.
3. Among the legal ramifications are the following:
 - a. His married status is legal;
 - b. The child he fathered was legitimate, as evidenced by blood ties (DNA test); and
 - c. Both children and wives have the same right to make a living through a marriage that is documented with a marriage certificate.
 - d. If there is a divorce, whether biological or by death, the woman retains her title to the property.
 - e. Both children and wives remain legally heirs

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